

Audit and Finance Committee Meeting Transcript – 10/28/2015

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[9:08:10 AM]

>> Tovo: Good morning. I'm mayor pro tem Kathie tovo and I would like to call this meeting to order. It's 9:09 and we're meeting in the boards and commissions at city hall on the 28th, I think. We have a pretty packed agenda and I need to let you all know that I have a hard stop at noon so I'll be leaving at noon today as a reading event throughout the city and I'm reading at an elementary school in district 9. Maybe some of the rest of you all are doing that too. The first order of business is approve the minutes from September 23, 2015. Anybody want to make that motion? Councilmember pool moves approval. Vice chair troxclair seconds. All in favor? That's unanimous on the dais. We have some citizens signed up for citizens communication. The folks I have signed up for citizens commission are Michael Folsom, miss Vega is donating her time to Michael and you will be followed by Paul Robbins and those are the only citizens I have signed up for citizens communications. >> Thank you, committee members, my name is Michael Folsom, resident of south Austin. I'm here to talk about the animal -- wildlife management recommendations to council. I've given you a copy of that in your handouts. I would like to give you a little background of that policy, how the changes that they are promulgating or asking for fall under the purview of this committee and also have a request for action

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from the committee. The existing policy is humane and based on scientific research. It was formally adopted by council in November 2014. The points of recommendation from the commission, they want to audit and cancel the city's participation in the Travis county contract, hire a wildlife specialist, full-time equivalent, develop a wildlife management plan and convince Travis county to participate in fte funding. Adopting the ACC -- aac recommendations will increase the dangers to citizens and their pets. Coyotes, we have to remember that they are predators and here are some examples of coyote attacks both on people and on our pets. The current coyote management policy includes lethal options it works, it's based on scientific research. Nonlethal hazing is recommended and there's no scientific evidence of its effectiveness. They are making the same arguments today that were rejected by city council in 2001. They want to eliminate lethal methods and adopt a management plan as was done in the Denver area. I've included letters of opposition to changes at that time from chief Acevedo, Travis county commissioners court Sara Hensley of pard, Texas agrilife and the chief animal services officer at that time Abigail Smith. There's also a report from Burt Lumbreras on the implementation of that 2014 plan from June 23, 2015, speaking to the efficacy of the program. So let's take a look. The proposers claim these methods are effective. We have an example, city of Denver adopted this type of

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program a few years ago. What's been the result? Human attacks have increased by 237%. The policy has failed to curb aggressive coyotes, park rangers have to be sent out to shoot rubber pellets in an effort to curb them. Trails also can be closed for months. Let's look at one of the recommendations from the animal advisory committee. This is recommendation number 4. They are requesting that -- or they are saying that there's disconnect between the management policy and the actions of the contractor, wildlife services. They are also alleging that the wildlife service is in violation of an article in the city charter concerning hunting and trapping. So we would request that the chair of the aac and/or the chief animal control officer be invited to appear before this committee to explain and document these allegations that they made in their recommendation. If there is a basis for the allegations, I as a taxpayer would request there be a city audit of the contract to correct any problems with that. But if there is no basis for these allegations, if the city auditor finds there is no basis, then a report should be made to full council on this issue. A little bit of background on the request. In my opinion, from talking to some of the folks and staff and so on, there's no disconnect between the coyote management policy and the actions of the specialist. The coyote management policy adheres as per Mr. Lumbreras' letter to the November resolution and also to article 3-2-4 because the agrilife wildlife specialist, after all he's under contract with the city. The aac is unfamiliar with the current management process and the results. We spoke with the pard ranger manager, he said he hasn't

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discussed wildlife or coyotes with the animal services chief officer or the aac. We know in speaking with the agrilife wildlife specialist he met with the chief animal services officer, but he's never been invited to speak to the aac from the November 2014 resolution or this recommendation. The wildlife specialist provides quarterly reports to the chief animal services officer in Travis county and according to the contract can certainly provide more reports with more detail as requested by the city. Let's look at costs for just a moment. A cost effective policy we pay \$10,000 a year for this service. Canceling the contract to change a feat, I estimate my cost \$85,000 a year for a new fte. We may need new infrastructure. Who is going to respond to 311 calls. And our current contract includes management of damaging wildlife species as well. So a balanced, robust program is needed in order to deter the danger of rabies. There was an audit in April 2015 that says there's a lot of deficiencies in the department. And we would also request one more action. We would like to have the aac and the chief animal services officer speak to why the city needs to spend eight times more than we currently spend to replace a program that's working well. Why the fte has a higher priority than those needs pointed out in the audit, and given the contract is working well and dog attacks far outnumber coyote attacks wouldn't it be a higher priority to hire a new animal control officer to hit the streets and enhance public safety rather than changing a policy that's working. And again, we would request a report to full city council.

[9:16:13 AM]

Thank you very much. >> Tovo: Thank you, Mr. Folsom. And as you probably understand, this overlaps animal welfare is under health and human services committee so it would be appropriate for that committee to also be made aware of your presentation here today. >> Thank you very much. >> Tovo: Mr. Robbins. You have three minutes. Mr. Robbins, did you intend to speak about an item on the agenda or was it truly citizens communications? >> I'm going to give the speech for both things at once, but there's an item on today's agenda that I'm speaking to and an item not on today's agenda. >> Tovo: Okay. Very good. >> Council, thank you for your patience. I'm Paul Robbins, I'm here as a volunteer. I'm speaking to your item, the audit about the low-income weatherization program and about something

that I think you should do that's in the same direction. Please understand that -- since I only have three minutes, I'm only going to dwell on three points. The first is that I read the audit and they did their job, but it -- one of the points in the audit kind of got to me a little bit and that was something on page 6. In the discussion about uneven qualifications from two funding sources and how that disqualified 67 people because they had to get an education course while other

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participants did not. And the auditor is correct that there is this double standard, but my reply is so what? Requiring a four-hour class in return for almost \$4,000 in free weatherization work does not seem onerous to me. Participants would get almost \$1,000 per hour of attendance and probably learn to save money on energy bills in the process. So while the auditor's point is correct, I'm not sure it's terribly relevant. More important is what was not discussed in the audit. Now, I have this chart in your August budget hearing, but I'll show it again. Why has the free weatherization cost gone up so much? The program is 65 to 140 percent -- excuse me, 65 to 148 percent higher than inflation adjusted benchmarks in prior years. How can the costs be lowered to get the best savings per dollar spent? And my third point, which is not about the audit, is why is this the only program that helps low-income people being audited? Weatherization is a little more than \$2 million a year or at least it was in 2015. The customer assistance program is about \$10 million a year for Austin energy alone. About 16 million if you count all the utilities. Now, as you know, I've documented extensive problems with misspent money. How come we're not concentrating on helping the poor in this area as well? Those are my comments. Thank you for your attention. >> Tovo: Thank you, Mr. Robbins. Okay. Our next order of business is the staff briefing on the job

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order contracting program. I understand there is an item coming forward on the agenda at our mid-november meeting. And so this is background in preparation for that. Welcome, Ms. Truelove. >> Okay. Thank you very much. My name is Rosie Truelove. I'm the capital contracting officer, I guess. Still getting used to our new department name. As mayor pro tem mentioned, we have an item that's coming up in November that's going to add dollars to our job order contract. And so in advance of that I thought it would be wise to come and give you some background information on what the job or the contract is so you have some context before you consider that item. So the city has had a job order contract -- oh, wait, sorry. The job order contracting program or joc since August of 2010. This is a contracting method for maintenance, repair, alteration, remediation or minor construction of a facility. So it's considered a construction method. It's one of our alternative delivery construction methods that we have available to us. Work is of a recurring nature but the delivery times, types and quantity are different. Selection of job or the contractors is based on best value to city of Austin. We measure mbe and W.B.E. Goals and monitor each assignment for utilization of the subcontractors or for meeting those goals and this is good under chapter 269 of the Texas government code. So some of the benefits of job order contracting, first it can decrease our construction performance schedule. So it can be a quicker delivery method for some of our smaller projects. We can control the construction costs of a standardized unit price book. For us means. And because this is a method for contracting of indefinite quantities of project, we

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have -- when we issue a solicitation, we don't -- we're able to contract and monitor things from commencement to completion. We're able to put out a solicitation inclusive of multiple trades and

disciplines so it's a very general contracting method. We issue multiple job orders under one contract and we set a period of time either by calendar or the amount of time that the contract is active for and/or dollars. So we'll be talking about what our request is here in a minute. Structure of the job order contract, it's very similar to what you would expect. City of Austin services is the owner. We determine the job order assignments. We have a requirement to have all of these projects or assignments be fully engineered or sealed by an architect, then we make those assignments to one of our three job order contractors and they would in turn subcontract out with their subcontractors and suppliers. For our 2013 contract we have three firms that are on this contract. Warden construction corporation, kbr, jamail and Smith construction. All of them have Austin offices. When we came for award of the contract initially there was a fourth firm, but they did drop out before we actually executed the agreement so we have three active firms on our job order contract. If you look at where we're at, our current contract has \$12 million of authorization. We've spent about 9 million of that. We have remaining authority of \$4 million and that's 40 job order assignments that we've issued, 19 of which have been completed or are closed and 21 of which are still open or ongoing. So for that \$10.5 million that has been assigned out, this graphic shows you kind of the general dollar amounts that we're talking about. The assignments that are in red are on the larger end and

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you'll see that those are construction of the city hall council offices that many of you reside in. The renovations to the chambers done a few years ago. And then some work at Austin Bergstrom international airport for restroom renovation. All of these contracts are over \$5,000 so when we went to issue the assignment you would have sign an item that came to council for authorization to issue. We have one of those for the Millwood library I believe the last council meeting. Occasionally from time to time you will see those kind of items coming before you. It's certainly not the norm. Our contract is ideally suited for the items in green with an average contract of -- or average project cost of 100,000 is what we look at typically as being the most successful type of assignment to come on the job order contract. For our 2013 program, our average cost is 263,000 per assignment and 63% of assignments were under 300,000 and that's kind of where we're trying to keep our contract the most active is on those smaller contracts. We want to continue to bid out some of those mid sized contracts so we're continue to go build the base of contractors that are able to do that kind of work in the city of Austin. A job order contract really, it represents only about 3% of our general construction activity that we see. So this is -- you'll see the 9.8 million of job order contracts during this time period and similarly we had 311 million for invitation for bid so that's exclusive of our alternative delivery method such as design-build and construction manager at risk. It's a very small portion of the work we do but it's a very

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important portion because it allows us to meet our customers' needs with a very quick turn-around. When we issued our job order contract back in 2012 that was -- that was approved in -- at the end of 2012 and awarded by council, we had mbe and W.B.E. Goals associated with it. They were 1.67 African-American, 3.41% hispanic, 0.8% native American -- excuse me, native American, asian-american, a 1.8% mbe. We're far exceeding those goals with the exception of slightly not meeting the native, asian-american. We think this is a big success for the program and we recognize there is one ethnic category we're not meeting the goal and we have been talking with smbr and they are going to be reaching out and talking with the contractors to continue to reinforce the importance of the mbe and W.B.E. Program. For the remaining two terms of the contract. The item that's coming for, I say on 11-12 but will probably be bumped to 11-19. We've got some items that are kind of in flux with the cancellation of that

November 5 meeting. Really is to fulfill -- it's to -- we're requesting authorization to fund the second and third option terms. So when we initially awarded the contract, council at the time awarded the contract for an initial two-year term and then three one-year extension options. We've come back to add funds once and we would like to now come back to add funds to take us to the end of the contract which would take us into up to January of 2018 in which place we'll have a replacement contract in existence that would be able to take the work over. We anticipate for the rest of this contract approximately 80 assignments with an average cost of about 130,000.

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That's how we got to the \$12 million, so that's the request that's going to be on the agenda at the mid-november meeting. I'm available to answer any questions you have about the program or the item that's going to be coming up. >> Tovo: Councilmember pool. >> Pool: Thanks for being here today. Two quick questions. On the slide right before this one where you have the pie charts and the percentages -- >> This one? >> Pool: On the left the program participation, is that metric related to the percent share that each group has in these areas of business? How did you come up with that? >> That's based on payments that were made to firms that are certified in those ethnic groups. >> Pool: So this is not the number of firms but rather the amount of money. >> The amount of money that's been -- >> Pool: And the second question is there any connection or do you plan to have these conversations with the economic opportunity committee also because we're looking at women and minority owned business, the share of the work that they receive from the city and ways we can expand on that. >> And we certainly can. This is -- this is a small piece of our construction program overall. And we do have goals that are assessed on it and the participation is -- is coming in much higher than the goals were that were established. So I see it as a success. It would be helpful for the economic opportunity committee to receive some information about that. We're happy to come to an agenda. I will tell you that before we scheduled this and the council item we actually sat down with the minority trade associations to share this with them because we work closely with them and improvements to the process is what we're looking for. We want to get their feedback on how things are going and what we can do for the last two terms of this contract and we are looking to -- you know, to make some changes and improvements, one of which is reaching out and sitting down with the contractors themselves to say, you know,

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this is what you see up there is actually -- it's all three of the contracts rolled together or all three of the contractors rolled together. If you look at each individually one might be falling short in a certain ethnic category or another, but overall it balances out to paint a good picture. But we want to sit down with each of them individually to say you are doing great, we appreciate it, but these are additional steps we would like to do. >> Pool: The chair for economic opportunity is right here and I know she and I and the other councilmembers on that committee have been really interested in trying to expand their inclusion. So what do you think? Maybe we can get you on the -- >> Sure, I'm happy to come in at any point. >> Pool: Thank you. >> Tovo: Any other questions for Ms. Truelove? Thank you so much for that background and this item you said is coming mid-november? >> It will be on your November 12 or November 19 agenda. >> Tovo: Thank you. Our next is 4, Austin energy low-income weather station program audit. I'm going to ask the staff to present our audit first and we have two speakers signed up aim Arndt and Carol bajitsky. >> Thank you. We conducted the audit of the low-income weatherization program at Austin energy, Nickie raji was the audit manager and Henry cotumla in charge. Nickie will be making the presentation. >> Thank you and good morning. This audit review of the low-income weatherization program as administered by Austin energy. We reviewed data for approximately fiscal

years [inaudible] To the end of July, fiscal year 2015. The low-income weatherization program is designed to help Austin energy's low-income [indiscernible] Improvement to their homes. For example, their insulation,

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thick insulation or solar screens or [indiscernible]. These services are provided free of charge to qualified low-income customers. During our [indiscernible] Allocated for this program of approximately \$6.6 million and in the same period [indiscernible] Approximately 320 homes and at the end of the audit 260 homes were in progress. Our first finding is about Austin energy having these opportunities to provide weatherization services to our low-income customers. First Austin energy did not spend or fund in a timely manner which is after the program losing a significant amount of funding. Per council direction Austin energy has to look at the minimum of one million dollar -- if there are funds that are not spent this amount of money rolls over to the former fiscal year until it's spent. This means that even Austin energy did not spend funds timely, this amount will eventually be spent on the specific program. In addition to the 1 million-dollar that is [indiscernible] By council, every year Austin energy allocates funding for additional low-income weatherization services from the energy efficiency services funding source. However [indiscernible] Within the program but goes back to the [indiscernible] For lower energy efficiency services program which means the \$1.2 million of unspent funds from fiscal 13 and 14 was not specifically used for weatherized homes for low-income customers. We calculated that this 1.000000 would help weather

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eggs -- one point -- [indiscernible] Qualified customers, Austin energy screens customers based on specific criteria related to funding sources. We reviewed the [indiscernible] As applied to Austin energy and we noted that Austin energy did not provide weatherization services to some customers that were identified as being qualified to receive the services. And these customers did not meet the last of the spending criteria that is applied on the funding source that is for our requirement. But they could have qualified under the other funding source. We also noted a small number of customers that received weatherization services although their home did not meet the criteria of the home size and home volume. And finally we found also from the -- there are two groups within Austin energy that perform some tasks related to [indiscernible] Qualify and although despite being -- because of the [indiscernible] Was not affected. An additional finding is that Austin energy does not have all information that would be needed to evaluate the impact of the weatherization program. For example, Austin energy tracks output information such as number of homes weatherized, but we found inconsistent data related to the [indiscernible] Also associated with this measure which makes it difficult to evaluate the performance of the program and we believe it creates some confusion and maybe [indiscernible] Expectations for the stakeholders. Also one of the objective of the program is to lower the electricity bill, but during our period this was not routinely tracked to determine the actual bill reduction was

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not readily available. We also had some positive observations and Austin energy is making key improvements to its -- of the weatherization program. They are consolidating data into one data base and I think is a really important improvement because now the information is stored in their active systems. We think if these changes will help mediate some of the challenges that we have observed. And we issued five recommendations and our aim after addressing the findings [indiscernible] Austin

energy has agreed with our findings and recommendations and they have laid out an implementation plan for [indiscernible] Putting those improvements in place. This concludes my presentation and I'll be happy to consider questions. >> Mayor Adler: Thank you very much. Does anybody have any questions for the auditor? Okay, actually I -- yes, vice chair troxclair. >> Troxclair: So we talked earlier this week about the audit and one of the things I was really hoping the audit would find based on some concerns that have been brought to the council's attention was how -- if the goals were being met and how -- and the people who were having their homes weatherized, if they were seeing a return on the investment that the city was making through the program. But it sounds like from the results that it was really difficult for you all to come up with that because of the lack of the goals of program. So you are recommending that we ask Austin energy to identify what the goals are and what the -- what the returns should be we're looking for? Because we want to make sure -- I mean if we have this program available to low-income residents and we want to get, you know, either

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provide them with savings and/or provide -- make sure that we're conserving as much energy as possible, I want to make sure that we're doing those things and using that money as efficiently as possible. >> Absolutely. That is one of our recommendations to clarify what are the objectives and performance measure that evaluate whether we're making those goals and the desired outcomes of the program. >> Troxclair: Thanks. >> Tovo: At this point I'm going to suggest we go to our citizens who have signed up to speak and then we'll have an opportunity to ask additional questions of the auditor as well as our staff. Mr. Arndt and next and last will be Carol bajitsky. William, you have three minutes. >> Good morning. My name is Tim Arndt. I have the opportunity to serve on the low-income consumer advisory task force thanks to mayor pro tem tovo. Thank you. I just wanted to come and talk about one of the recommendations that came out of the task force which is that funds that are set aside for the low-income weatherization program be used only for that program. Investor-owned utilities throughout the state of Texas are required to spend a percentage of their energy efficiency budget on low-income, and I would like to see those funds just -- whether you call it roll over or just not be used for any other purpose. I do want to thank Austin energy for their working with the task force as well as their hard work in helping our neighbors reduce their energy or their utility bills through this income qualification weatherization program, as well as making their homes more livable and comfortable.

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So thank you. I'll be available for any questions if you have any. Thank you. >> Tovo: Thanks very much for your service on that committee and just so you and others know my office did ask that that topic be added to our next Austin energy committee so we'll be discussing those recommendations and hopefully moving them forward so thanks again for your work. Ms. Bajitsky. >> Actually had a handout. I'm not exactly sure how to get it -- good morning. Councilmembers, committee members, my name is Carol bajitsky. I am executive director of Texas rate pairs organization to save energy and I recently was the chair of the low-income consumer advisory task force and we looked very carefully and long and hard at the low-income weatherization program and I would like to make a few comments about that. Number 1, I think this audit is a very good report. I felt good whenever I read it because I feel as though having the auditor's office do this independent study and have this group of people in the community look at the program, these two separate processes are really leading to pretty similar conclusions about some things that can be done to improve the quality of services and lower the cost of services, you know, like here in the city. So thank you very much for sponsoring this audit. I brought to you a page, and I'm sorry that I do not have this electronically. I guess I could if I was better organized, but I have the

cover sheet from our report and then I have a description of one of our recommendations which is a weatherization cost reduction study.

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And this seems to mesh very well with some of the findings, you know, of the audit report because we would like to see the program looked at in its current state and to look at just the costs of various components and see if anything can be done to lower those. Now, our reason for wanting to do that, if you look at the last two pages of this, there are two charts that were provided by Austin energy during the task force process that are appended to the report. The one -- the first chart looks at the total average costs of the program ranging from, oh, like 2005 through July of this year. And we see huge swings in the amount of costs. Some of that swing may be because of the different types of services that were being provided, but if you look at the highest cost is the green, which occurred during the stimulus program where the benefits were the highest. Then the benefits like went down and we still have high costs and then we got rid of all the -- we got rid of all the equipment in the program and we're still -- we're only spending \$300 less than we did before we stopped doing air conditioners and refrigerators. So something needs to be looked at here to find out why these costs -- you know, we've heard claims that you can't provide the air conditioners because they are too expensive. But if we look at these Numbers, we can see that we're not providing the air conditioners, but the, you know, program still is pricy. Now, if you look at the next table, this is a breakdown of different measures by cost over time and you'll see that all of these measures have gone up in price. They have gone up in price very seriously. Average price of solar screens went from \$200 to 714.

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Attic insulation 648 to 1,748. And I am a little bit concerned that these prices look to me like they are much higher than what's happening, you know, in the market for people who are shopping and so I'm wondering if there something that needs to be done about the procurement process, whatever process we're using here to get, you know, favored nation prices for these programs rather than, you know, inflated prices. So my -- the reason why I'm here today is I would like for you to become interested in this recommendation so that we can move forward because I think it's a very good first step in trying to make this program as good as we can make it and make it a good asset for the city. Than that concludes my remarks. >> Tovo: Councilmember pool. >> Pool: Do you think that a way to get our arms around the costs to see if they are inflated or maybe not reflective of the actual costs would be to have some kind of a baseline reimbursement that would reflect the actual cost of the unit? Let's just use a smoke alarm. That's a really small thing, a smoke alarm. And then have a specific percentage margin added to that for a sense of profit for the private sector firm that's providing these? Assuming that this would follow all of our requirements with contracting. >> Yeah, actually I do think we do need some options similar to what you are talking about. Because I think that we need to have somebody from outside of this program, like a disinterested person come in and look at how these prices are being set, how much they are, how much they compare and to see what we might do to, you know, change the way we do business, if we can, if it's possible -- to see if it is

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possible to lower those prices by doing business in another way. >> Pool: And we could actually look at the cost of each of these items if you purchased them as a installer and if you were buying [inaudible]. >> At this contract. >> Tovo: Thank you, Ms. Hart. Councilmember Renteria. >> Renteria: Can you also

when you all do that study can include the -- including all the labor costs involved with -- with these? >> We'll look at the details of the contract. I'm not clear that they provide us labor costs, but if they do -- >> Renteria: All I want to know if you are buying insulation, do they include also the installation of that -- I mean installing the insulation in your house, is that included in its cost, the labor to do that work. >> We'll certainly look at that and what it sounds to me is that you need a briefing sheet on what the terms of the contract are and what the costs included in the contract are. We'll certainly be glad to do that. >> Tovo: All right. Thank you, Ms. Bajitsky, and thanks for your service on that committee. So we're back to the audit generally. Are there additional questions? Either for the auditor or for our Austin energy staff? >> Pool: Do they want to make a response? >> Tovo: I have some questions as well, but please come up and -- >> Okay. >> Hi, I'm Denise keen

[9:48:31 AM]

director of services at Austin energy. >> [Inaudible] Customer energy solutions. >> And if I could, could I comment on your last question? So we -- we currently on all the last two contracts do use rs means, which is a standard pricing book for both construction and labor, and that becomes the foundation of the contract. We actually line item by line item had over 300 measures listed and said give us your price under the current pricing structure. The -- the process that we use is -- and this is where I would defer to you, but we had to give them each line item with the rs means suggested price and it was up to them to decide what their pricing would be because it is a fair bid element, and if you want to add a little more to that clarification, but that's how we did arrive at those pricing. The earlier pricing, just to give you a perspective, is in those earlier years they went several years before updating the rs mean pricing which is in 2008, and last year we updated it to 2014. That's where you see the shift based on the rs means guidelines. >> Tovo: Thank you. Did you want to provide a more general response to the audit? >> Sure. And I want to thank the office of the city auditor for the amount of time they spent in covering this audit. A couple things I would comment on as relates to the expenditure of funds in particular. So recall going back to to rate redesign that took effect in fiscal 2013, there were several challenges. There was actually a challenge to the rates that took some time to settle, and another challenge literally was one of

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the contractors who bid on the weatherization contract filed a protest. What did that result in? It resulted in a delay in our ability to finalize the contract and launch that weatherization program until the last three months of the fiscal year. So there was no way physically possible to spend the moneys in what was a three-month period, especially when there were appliances that were involved in the program at that time that required pulling a permit. So that is where we, frankly, fell behind and staff has endeavored to catch up. This past year we have weatherized over 500 homes, and over the course of the period covered by the audit, Austin energy augmented the amount of money that it provides to weatherize homes out of the Austin energy weatherization program which supplements the cap program. So about a year or so ago we increased that by half a million dollars. So we have been directing more resources into the program as was observed by audit staff. We are continuing to look at ways to reduce the costs associated with the program. We are working with James Scarborough to come up with a contract that will be, shall we say, more uniform in terms of how it's administered and try to deliver greater savings to more [inaudible] But in the free weatherization program to

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ensure that we meet the needs of the customers. The other thing that we recommended this year was

because we have, if you will, overcollected on the customer benefit charge, we suggested that we return some of that overcollection to customers over a three-year period of time. That reduces the customer benefit charge for every customer, including low-income customers. So through that -- those two things, enhancing the program and, frankly, lowering that tariff, all customers, including low-income customers who are most in need, benefit. So I hope that's -- that's responsive. >> Tovo: Thank you. I have a few questions for you. I guess in part because I've heard concerns through the years about whether we're really using our funds and targeting our funds. It's of particular concern to me. I appreciate all the work that Austin energy does and I appreciate also what you are explaining in terms of why the funds couldn't be spent in the time period, but of more concern to me is that they were not -- is that when they were used and rolled over they were not targeted toward low-income customers and I wonder if you could address why that happened. >> Well, they -- they were -- I mean there's very specific criteria for the low-income weatherization program, so at or below 200% of the federal poverty level. There was never up until this past year a provision with any of our customer programs that we roll over the funds until the following year. So think of it this way. If we overcollected from commercial customers, then the funds get, if you will, redistributed every year. And the important thing to keep in mind and I'm going to get a little pointy-headed in terms

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, we [inaudible] As much money in revenue as we would spend, but it's not a perfect world. So if people are actually using less energy, we're going to collect less revenue. So ideally they would balance out. The good thing that you have is a periodic reassessment of all of our costs of service and we're going through that process right now to determine how do we best go about collecting those funds. The audit found that I think a very, very small percentage of homes, correct me if I am wrong, it was like 2% of customers received weatherization services and they should not have received those services. Is that the gist of your question, mayor pro tem? >> Tovo: Knowing how that happened. >> So if I could on a couple things just to kind of get a broader picture, part of the thing with the weatherization, and I joined the team the second quarter of fiscal year 2014, so I won't -- won't say that I've been here all 30 years of the program, but I -- I have experience in this area and so one of the things that I noticed right away is we went from prior to Ara where we had a federal grant which gave us \$9.6 million, the average budget was 800,000. So the element of the staffing, the systems in place was to really spend about 800,000 a year. When we came off of that transition from aras of 9.6 million to now the budget, which was increased to 2.377 million, a lot of the processes and systems as auditing had shared had not been in place. That's been our main focus as I've joined the team. The other thing to put into perspective as well is when she was sharing with you about the unspent funds, we went over funds in multi-family. And small business lighting. So multi-family, 50% of the

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austinites rent and so a lot of that funding that was unspent in weatherization actually was used to -- to address the overspending on the multi-family perspective. So I hope that adds a little bit more clarity on some of the big picture items. And I think you had one more question that I would like to clarify, if you can restate that, that would help. >> Tovo: Sure, and it relates to the second point you mentioned. The funds were spent in multi-family versus weatherization, they didn't necessarily reach low-income ratepayers, if that's where the funds were moved to because some of the efficiency grants we do are for pretty -- pretty expensive apartments, and one of the ways we've been trying to track that as a council is ask when you do those multi-family rebates that you list the rent so we can, one, see what kind of renters we're reaching, but also track over time whether those rents are going up and make sure that

it's not in part because of the those energy efficiency rebates that required a property owner to participate. So anyway, I just know that we're know getting down to that [inaudible] And they are not all apartments hitting low-income. We had some at the domain recently. >> Right, and to your point we try to hit all the different sectors. Within multi-family you have some properties that are lower income and some that are higher income. So a percentage of those, and I don't have it off the top of my head, were in fact affordable housing and low-income. So it gives you a perspective that we are reaching out to attribute those funds. Now at the same time please understand that the -- there's these sources of income which is a million dollars that is defined specifically for weatherization. That is a defined amount weatherization. On an annual basis we also have the discretion to add to that, which is what Debbie Kimberly was sharing with you that we increased the budget

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to 1.377 in addition to that mandated fund of a million dollars. So that might give you some additional perspective of some of the changes going forward as far as the definition of what is rolled over, which has always been that million dollars. We track that, and in addition looking at the weatherization specific of these discretionary funds. >> Mayor Adler: So >> Tovo: I appreciate that if the program expanded greatly in a short period of time. You may not have had the staffing and the processes in place to manage all the details in the way that you will going forward. But I am still not clear on how customers who were not eligible were given -- were given access to these resources? Was it a particular misunderstanding about one criterion or was it a more general issue? >> Correct. Through this transition one of the things is a new party that cap funds were established in 13, along with the cap discount steering committee and they ha criteria different than our criteria and there were some things in that initial element that we worked with and we established the processes of checks and balances working with the comptroller's office as well as management, so those have been addressed. >> Tovo: I don't mean to keep grilling you, but I still don't understand -- can you give us specifics about what the criterion was? When we have people getting access to resource for which they're not eligible, I feel like as a member of the audit committee I need to understand what the criteria was. >> So one of the criteria in 2013 is that you did need to participate in the education program. While we were working with the low income advisory task force they asked us to shift that from you had to qualify to if you didn't qualify for

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that program you could then do the ae weatherization program under the other funding source. Some fell in a N that transition. The other is we rely on the average home to be \$250,000 without the price of land. That has changed since [indiscernible]. Through the discount steering committee they asked us to change that. It's now \$250,000 according to tcad the value of that home at that time without land in between these two sessions sometimes we would be looking at data from the year prior and we did have some homes that significantly did increase even on their land improvement value, which then took them outside of that realm. >> Tovo: Thank you. I'm looking at page 6 and those are the details that the audit found in terms of the qualification. I do have a question, I understand councilmember pool has a follow-up question so I'll yield the floor to her. I do want to get back to the training piece of it. In terms of the criterion piece that were not being met for people who were not eligible it was about home value. >> The home should not be larger than 2,000 square feet and we found a few instance hazard in which the homes that were weatherized exceeded this criteria. And if you exceeded the criteria of the home value. >> Tovo: I think I understood from your answer, I'm not completely clear on it, were you suggesting that the values changed in the interim from the time they were accepted to the time that the

work was done? So that could have had a shift in the threshold. But what would explain the size discrepancy, if the house is under 2,000 square feet, unless it's undergoing change in that period time, it would still be under 2,000 square feet.

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>> In addition to the cap when they defined this additional source the discount steering committee had created a criteria where the home size wasn't a part of that. So there was a slight gap between when they set that criteria and that we've always had a criteria that we didn't serve the larger homes. We are also dependent on the tcad database to share with us what the square footage, the home value S and there is a lag in time sometimes between, you know, when they're assessing it versus when we actually are utilizing it. >> Tovo: Is that consistent with your understanding? >> When we did our study we took into account all the variables. There was an increase in the home value, but we took into account that. We believe that's an exception and we look at the tcad information to make our comparison and share with Austin energy. So this seems to be exceptions, the 12 homes. >> Tovo: I see. So the auditor's assessment these were still examples that did not meet the criterion even given the other -- >> Correct. >> Tovo: The other factors. Okay. And I understand from Austin energy that you are putting into place or have put into place clearer processes to make sure that there aren't -- >> Correct. And that everybody is using the latest tcad database. >> Councilmember pool. >> >> Pool: I wanted to follow up on the homes that were eligible and not included. There were 65? And were the reasons for them inadvertently being excluded similar to the ones where they shouldn't have been included, but were because it's a larger number of homes that -- >> It was all associated with those that initially had been defined as cap and had not -- didn't want to participate in the education program. So those 65 had been -- had been denied using the cap funds and had not transitioned into using our

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funds because a policy wasn't in place at that time. >> Could I add to that briefly? Because one of the things that was done, and it gets exactly to the questions you've been asking about the efficacy of the program, was intentionally we had people in the cap program go through an education process because a big, big part of using energy more wisely is doing things like adjusting your thermostat, closing doors, all of the behavioral elements that allow you to use less energy, save money on your energy bill. In some states, and certainly here in Austin, you want to be able to look at a test and a control group and say hey effective is the education component in changing customer's behaviors versus having no education component. And so part of it was to have that test and control group to say how much more of those customers would save by going through the education program as opposed to just getting their home weatherized and not changing their habits? So that was part of the thinking. We had a test and a control group, simply put, to evaluate the effectiveness of the education component. And to that -- see, I work with distractions very well, a man crawling under the table right now. I'll just keep right on talking. [Laughter]. It is one of those elements that to Denise's point we're looking at enhancing programmatically so that someone doesn't fall through the cracks, councilmember pool. So yes, that's something that we're working on. >> Pool: And we had a couple of layers of review on the data, right? >> Yes. >> Pool: I look forward to seeing how this shapes up next year with the additional controls in place and the clarity and the

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direction and the goals and measurements. >> I do want to commend the work of the low income

consumer advise I have task force in closing. That group met 25 or 26 times over the span of 11 months and thousands and thousands of staff hours were dedicated to that. They came up with some great recommendations. And two, to Ms. Great sit ski's point, we are looking at targeted installations in neighborhoods like led lights that are very cost effective these days and partnering with -- I think there are great opportunities to partner with the chambers of commerce, faith-based organizations and third parties to go out and do those quick hits at a very cost effective price and to help the many customers in our service territory that would benefit from something as simple as changing a light bulb. >> Tovo: I have a follow-up question on the education piece. As I understand the audit, those 67 customers who are eliminated because they didn't complete the education, that wasn't a requirement. I mean, the audit clearly states that -- 65 of the 67 did not complete the training and so didn't receive weatherization services from either program, but that was not a requirement for the energy services weatherization program so they didn't complete the training. And Mr. Robbins I heard your point earlier that perhaps -- I understood your point to that issue earlier, but it wasn't a requirement, they didn't complete it, but they were denied the resources. So I'd like to understand how that -- how that happened? >> Well, they were assessed by the cap program to participate under the cap funding source. So under their criteria they did not meet the requirements at the time, which was to participate in education.

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Several months later we found out this was of concern to the low income advisory task force and so we switched the policy so then we would automatically transfer anybody who was denied in to our program, which was to allow them to then receive the weatherization. What we didn't realize is there was this outstanding list there that had not been transferred. Six that consistent with your -- >> Is that consistent with your understanding? >> That criteria is in place for the funding source of the cap so they did not meet the criteria. However, they could be weatherized using other funding sources that does not have that criteria. >> >> Tovo: Right. >> So mayor pro tem, what has been initiated in Austin energy is weekly meetings that occur between the two respective organizations because the other part of the organization, customer care, administers the program beyond their weatherization activities. They administer the program for the benefit of customers that receive discounts under the customer assistance or cap program so there are now weekly coordination meetings to ensure that we take the belt and suspenders approach and nobody slips through the cracks. >> Tovo: Has there been any attempt in the 65 customers who were interested and would probably really benefit from the program? >> Thanks to James Scarborough and the purchasing group we now have a contract in place and we will be issuing jobs as of November 2nd. And they're in that B we already have about 400 names that have been vetted that are interested in us coming out and performing an audit of their home. So then we will be addressing those. >> Tovo: So those 65 customers have been brought back in? >> Yes. >> Tovo: Great. Other questions? Okay. Colleagues, we need a motion to accept this audit. Vice-chair troxclair moves approval of the audit. Councilmember pool seconds it. All in favor? Okay. That's approved. Thanks very much to all of y'all. Next we have the recommendation. Number 5, the recommendation

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as to the disposition of 2.4 -- \$2,411,249.01 and this was an item referred to us by the city council. It's my understanding it's also been scheduled for the economic opportunity committee, but since it was referred to us by the council we'll be hearing a brief presentation about that today. >> Good morning, mayor pro tem and councilmembers. My name is (saying name), assistant director with the economic development department. I'm here with my colleague David Colligan and we wanted to give you an overview of the business enhancement program that will receive the majority of the funding from the

settlement. In 2007 the city council created the business retention enhancement program. It was a 24-month pilot program and further secured by council in 2009 to permanently manage this a permanent program through the city. It points the establishment of business districts between congress and sixth street. It provides low interest loans for uses and provides for a quality of life in the area. The current uses of the program include facade improvements, tenant finishouts, business related equipment, at a cost associated with the design work. Currently we've used up to \$250,000 for loans, but in special circumstances we could increase the loans up to \$750,000. And the city may forgive the loans after five years if there's no default or late payments in the program. >> Current eligible area includes as you see on the map, as defined by congress avenue bounded by 11th street on the north, town lake on the south and the alleys directly east and

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west of congress avenue. And the areas of sixth street bounded by congress, on the west and southbound frontage road of I-35 on the east. The alleys directly north and south of sixth street as indicated on the map. The fee areas include the yellow outlined area. And the sources of funding includes temporary use of right-of-ways, vacation of right-of-ways and license agreement agreements. To date this program has provided two loans. One to miss Luna for \$25,000 and as part of the loan it created eight full time jobs and to apple Annie's on congress, which was another 250,000-dollar job and it created 20 full-time ftes. David is going to provide you with some program evaluations and future recommendations brought by the department. >> Sure, thank you. So this request for a presentation is very timely. As we've been working with downtown Austin alliance to be able to look at this program as to how it could be used more efficiently by our small businesses here within the city of Austin, I can also say that the redevelopment division has been working with small small businesses around the city and what we are trying to incubate merchants' associations. So we've been becoming increasingly familiar with some of the issues that small businesses are facing these days, especially around and in the downtown area. So we work collaboratively with the daa to be able to look at this program, the users and then actively promoting the program for use. And I can say that over the past year we've been in contact with daa to be able to look at this program specifically for some of the areas of interest and some of the users that have not been able to use the program or effectively go through some of the work that they would like to have done with the city.

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From the evaluation we find four different or distinct areas that show why it is these companies are not being able to utilize this program successfully. Currently the eligibility area does not match some of the different market focus areas that the daa targets, but also as we've kind of learned from our study with the music industry we're finding there's some discrepancies in the for some of the different night life and areas that could utilize the program. The program has attracted interest, but again, the current lending rates in which we offer are comparable to the market rates currently. The financial requirements and the documentation that is required for the process means that a lot of information is made public from the small businesses, which is not very attractive. And of course this is primarily seen as a recruitment tool, but it is not viewed as a tool for some of our small businesses that are currently looking to expand. So the current process and the documentation as well as the timeline made this a very unattractive program currently. So we're looking to move forward and possibly come to the economic opportunity committee with different recommendations that we would spell out a little further for how it is this program could be better utilized by our businesses. The first is to expand the actual service area, not expanding the fee area in which dollars being captured, but to look at a larger

market that also brings in some of the focus areas, whether it's the red river cultural district or maybe even some of the different retail focus areas for the downtown Austin alliance. We would also look to expand our criteria so that we can focus in on existing businesses rather than some of the incumbents. And then we would look to examine a potential of three different existing music and night life venues for improvements as well. This is a source within the program that is not

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currently offered so we can't capture those potential users. We'd also like to align this with our family business loan program that has been very successful from the small business program here within the city of Austin. So we can look at continuing to create jobs, but have a program that mirrors this other program that's been incredibly successful as well. We would like to expand the project criteria or the scope of what the projects can service through this program so we can catalyze our useful spaces, but make sure that we are also keeping them open for some of the different upgrades that are in line with the downtown vision. Whether that's upgrading windows or making more publicly accessible areas or maybe even different sidewalk patios or cafes available for some of our different business owners that are looking to expand their businesses, attract new markets and make their locations more attractive as well. We'd also like to look at including a matching grant component because we've had some users who have come forward who weren't a direct match for the program because of financial concerns. But if we did have some type of grant that would allow for them to have easier access into the program then I think we would have more users here. The only issue for what we've been facing is that a lot of our smaller and local based companies don't have the initial financing to be able to go through the program, to be able to make any alterations or adjustments to their buildings. So that's all that we have prepared today, but we welcome any questions that you may have about the program. >> Tovo: Thank you. I have one general one. I think that this was referred to audit and finance and it was more or less my understanding so that we could discuss what the eligible uses are of that money. And so I appreciate this information enhancement program which are where we have placed the money for now. But I wonder if we have a

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staff member who can address that general question of what the allowable uses are for this funding? >> Elaine hart, chief financial officer. I checked in with the attorneys that worked on the settlement and our position was that the initial settlement dollars should go to the funds that would have originally received the fees in the event that we have not waived them. And the action that council took in approving the 2.4-million-dollar settlement, roughly \$2,195,000 roughly went to the business enhancement, business retention and enhancement fund. \$102,320 went to the general fund and 114,000 roughly went to the Austin water utility. If the council took the position that they would like to rearrange those monies my recommendation would be that you leave the utility funds in the utility but that certainly you could reallocate any monies that went into the general fund for a particular program and with respect to the business retention and enhancement fund that was a program established by the council and the program guidelines established by the council, essential you would reallocate those monies in my opinion. It had been done during the budget process in 2014. >> Tovo: Thank you. Councilmember pool, did I see your hand up? >> Pool: Yes. I answered my own question. It was the location of the jw. I was looking to see if it was within -- it looks like the red line bisects it and the yellow completely encompasses where the jw is. >> Tovo: Councilmember troxclair? >> A quick follow-up to mayor pro tem's question. When you say we could reallocate the money.

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Are you saying that by expanding the criteria or by expanding the scope of the existing program within the economic development we could reallocate the money that way? Or are you saying that the two million dollars could be reallocated to any other department or program? >> The council set up that program initially, so certainly you can revise the program guidelines to expand that program. I thought the question was could you use those monies outside of that money and the answer is yes. It would require a budget amendment subsequent to the council direction, but that could be accomplished. >> Tovo: Councilmember Renteria? >> Renteria: Yes, I have a couple of questions here. The brep area, what does that mean? Do y'all collect fees from this -- this particular -- >> Yes, we collect fees from temporary right-of-way, vacation of right-of-way and license agreement. That was part of the guidelines that were established in 2007 and then permanently in 2009. >> Renteria: And you're asking to increase it to where the red line is at on this map? >> Only the -- no, we're not changing the boundaries of where we collect the fees because that would affect our sister department. We are going to bring a proposal to expand the boundaries for use only, not collection. >> Renteria: And the low interest loan program to apple Annie, is that a new loan that they [indiscernible] First? >> No, they are current on their at the same time their payment. And we have a 250,000-dollar loan that will pay off in 2017, but it is current. >> Renteria: But this is the loan they first received when they moved into that building? >> Exactly. >> Renteria: Which that

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came from the CDC money? >> Neighborhood housing has a 250,000-dollar loan and economic development has a 250,000-dollar loan. >> Renteria: So they had 500,000? >> Yes. >> Renteria: And they are current on all their payments. >> They are current on economic development's loan. >> Renteria: Do any of the groups -- I guess if they're at the five years, if they forgive whatever is left or how does that program works? >> They have not approached us for forgiveness, and that would be a recommendation if brought forward we could consider. >> So do y'all have any other businesses that are applying for this? >> We have some that have attempted to go through the program, but because of the current condition in terms of financing and collateral that's why we're bringing forth the changes to make it a little bit easier for them. >> I'm kind of interested -- wondering -- concerned we're going to put two million dollars into your vet program, but I just wondered how are you -- how are you using that money presently? >> Again, presently the last loan made was apple Annie's and because we've been working with the daa and because of the experience we've had with applicants and the challenges that they face that's why we're bringing forth the recommendations. And with the new information we've received in terms of the music venues downtown we are working with owners to expand the use to venues also because we know there's a challenge with music venues being displaced. So we're doing an evaluation of all possible uses. This program gets funded every year through the city or -- >> Just through the fees only. >> Pool: I had a question

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on how you define global. When you talk about global business recruitment and expansion, do you mean global in the sense of around the world or do you mean global and broadly applying within the boundaries of the program. >> That is a division name which David chairs the global. I'll let him explain the broad use of that. >> Yes. We do have services that we do focus on helping our local and small businesses to be able to look at market opportunities abroad. But this was the division that was tasked in hosting this program initially, but since we are diving deeper into more small business, redevelopment

issues in the downtown area and in the business districts that we're trying to incubate at this time we're moving this program into the redevelopment division, but for your question, global does have a full view, yes. >> Pool: Okay. And when the \$250,000 was awarded in fiscal 2008 and 2009, I guess that came under the parameters at the time and were approved by council. >> Exactly. >> Pool: And can you tell me where the transfer out that was nearly 1.6 million in fiscal '14, what that transfer out was for and what it was used for? >> It was used for the general fund. >> Pool: Okay. Was this at the time to balance our bottom line or for some expansion in other programs? >> My recollection is it was during the budget readings and there were several council amendments. This money was identified and I don't know what it was used for, but I can certainly email the committee and find out. I'm sure it was used for a specific purpose. >> Pool: Yes, I specific

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it was too. It would be good to know what it was to answer some questions about that. I just generally as you know, really support everything the city can do to help out our local small business folks. And if that includes helping them expand beyond the confines of Austin that seems reasonable to me as well as we all look for new fields to plow. I will be happy to work close with you all on the changes that you're looking to have adopted or just in your brainstorming, either just with my staff helping or through the economic opportunity committee I sit on. I'm very open and interested in helping you expand. I think this is an area the city really will be welcomed in pursuing. >> Thank you. >> Renteria: So when you -- this red line here where you expanded the area, do that mean that they qualify for small business loans? Low interest loans? >> If they meet all the guideline requirements. >> Renteria: Can you go past those lines there? >> No, not currently. Unless council expands the boundaries some more, which -- >> Tovo: So Mr. Victor in councilmember Houston's office has raised questions about past funding and I haven't had an opportunity really to understand clearly the spreadsheet that you provided him with, but I'm real interested in the answers to that too and I think it gets to the questions councilmember pool asked as well about how that -- since you haven't been able to make loans for the reasons you identified, exactly where some of those funds went. So I think the most appropriate thing would be for me to follow up in an

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email form before economic opportunity talks about it as well. But we are posted for action if there's anyone who is interested in making a recommendation at this point, otherwise we also have the opportunity just to pass and allow that conversation to go forward. Is there a strong interest one way or the other? >> Renteria: I would like to just let it go forward because I know there are going to be a lot of questions asked there on debit as as this comes before the whole council. >> Pool: I think what I would suggest and I think this is in alignment with everyone here on the dais is to let it go forward, but also to note that you're looking at expanding and more clearly defining the program and boosting it and trying to be -- to get more participants so that the program itself is structureddier and -- sturdier and has a better impact. Does that sound reasonable to everybody here? So it would be a motion to move this item forward to council with the note that we have reviewed it and gotten some additional information, we have additional questions and that we are also looking at information coming from economic development department as to an expansion of the program itself, the boundaries, for example. >> For clarification, would you want that to go to the economic ops committee first before it comes to council? >> Troxclair: I would like to talk about it in economic opportunity because so much of this parallels with what we've been talking about. And a few of the others things that are going to be on our next agenda. I think it's important that we have that conversation in that context. >> I just didn't want to get out of

sync. >> Pool: Absolutely. And I was remiss in not saying that. >> Tovo: And since the money has already been -- we've already taken council action to put the money in the business enhancement fund, I think it's -- it

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will stay there, save any other council action at this point. And I'll just say I think it makes sense to have the discussion at economic opportunity first. I'm real interested and have been looking at the family business loan and some guidelines that we might consider there, suggesting some changes there. So especially if this is -- if you're suggesting what sound like really reasonable changes to this program, but you're going to align it with the family business loan I think it makes sense to consider all of those items together. But thank you so much for your work and your look at the program and recommending those changes. All right. Thank you. Our next item is item number 6, the draft resolution, which I know has been discussed in this forum and in others. It's my understanding that last night the ethics commission agreed to take it up again at their November 10th meeting. Is that correct? Ms. Stokes? >> Yes, that's correct. >> Tovo: So I'll just say given that, I would question whether we'd be in a position today to actually recommend action to our full council. So I'll just say that. And councilmember pool has a comment and then we do have about 15 minutes worth of citizens who have signed up to speak. >> Pool: Right. And the ethics review commission had a fairly robust agenda last night, and put this item off. They weren't able -- they didn't have time to take it up. So early in the meeting they put it off for he on owe I think it will be a special called meeting on November 10. And I am looking for anywhere response, their -- for their response, their official response. This was already on our agenda because we thought we would be able to take it up at their meeting yesterday, but it didn't happen so I'm fine with delaying and also hearing from folks who are here. I will say I am very open to -- as you know, and I have mentioned this in a number of venues, open for

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some alternative solutions and would like to see them. We have -- my office has been attempting to meet with people who have some disagreements with the resolution. I think basically maybe not understanding what we're trying to do. And we have yet to be able to make that happen. So folks are here today and maybe we can sit down after this meeting and have a conversation. But I will turn it back to the mayor pro tem and any commentary. >> Tovo: Okay. Without further adieu we will hear from our citizens. Again, I want the public to understand we likely won't take action today and there will be another discussion at the ethics review commission as well as one here and then again at council. So if you would like to reserve your comments for one of those venues, you are certainly welcome to do that. Otherwise please take time to address us. Jeffrey tawawa is first. -- I'm sorry, I read those backwards. Stewart samplely is our first speaker and he's been donated three minutes by Jeffrey. He has a total of six minutes. Welcome, Mr. Samplely. >> This guy hot? Yeah. Good morning, councilmembers. My name is Stewart stamply. I'm an architect. I'm also the current president of aii Austin. I'm also the spokesperson for 11 organizations which include the American institute of architects, the American society of landscape architects, the associated builders and contractors. The associated general contractors of Austin, the American council of engineering companies, the greater Austin contractors and engineers association, the American society of civil engineers, home builders association of greater Austin, the real estate council of Austin, the structural engineers of Texas and the Texas society of professional engineers. I was going to try to do

[10:35:02 AM]

that all in one breath, but that's not possible. I wanted to be able to make a statement today that we understand that there was no action going to be taken. We were at ethics last night and although they did decide to not take action at the beginning of their meeting, there was a very good discussion at the end of their meeting with us and with the entire commission. And yes, they have agreed to set a special meeting on November 10th and hopefully by then the working group will have the ability to meet. We are as a group, which represent over 10,000 design and building professionals, are committed to respecting this process and do intend on working with the ethics group, the ethics working group. We understand that there are individuals in this process that are frustrated with our coalition, the fact that we have not had a response yet. And I think it needs to be understood that we are design and building professionals. We are not attorneys and these are legal matters. And because of that we have retained legal counsel to advise us on these issues. We are nearing the completion of this analysis. It is extremely complicated. And that again, we are committed to being part of this process. We have reached out to councilmember pool's chief of staff and we're hoping to find a time to be able to share our concerns with her first and then also -- so I'm here today, there are some other individuals that are here today if you have questions or comments for me. That's why we're here. >> Tovo: Thank you so much, Mr. Stamply. I looked over the fact that you had an additional three minutes donated by nick molai. If you would like to continue, you're welcome to. >> No. >> Tovo: Questions for the speaker? Okay. We appreciate you being here with us today. Next is Mr. Fred Louis.

[10:37:03 AM]

And then our last speaker on this item will be David king. Mr. Louis you have three minutes. Mr. Louis, you have six minutes. >> I'm going to make four quick points that are relevant to the -- this process. First of all, we have a broken lobby registration system. It is essentially voluntary and people do not report. We claim in Austin that we are a city of transparency and one of the most fundamental laws for transparency is lobby registration and reporting. The public understands that. Second, despite what you have heard, reca and a number of the engineers have failed to produce any counterproposal of any kind, oral or written U short or long, good or bad, reasonable or unreasonable, to Ms. Pool. I laid out most of these ideas in June in front of the ethics review commission. At that time reca said it was not interested in reform and it has refused to meet with me or Mr. Gullahorn or frankly anybody who supports reform. These other gentlemen to our right who claim that they like to engage in the democratic process have yet to meet with either me or Mr. Gullahorn despite many, many email requests. Frankly, their unwillingness to engage is a disservice to

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the democratic process and to the give and take that is required. It is also disrespectful to your colleague. If y'all were working on a resolution and there were people that had a problem and they refused to engage with the councilmember, refused to engage with you, I would hope you would tell them to go operate in good faith and go negotiate and discuss it with the councilmember carrying the resolution before they came and talked to you. That is the fact. Now, maybe I'm too Progressive for the gentlemen who are unwilling to meet with me. But Mr. Gullahorn is as conservative as they get and they're unwilling to meet with him either. Now, I hear these folks talk about howdy Vy sieve Austin -- how divisive Austin is and how we always want to go to war, but they're not willing to engage. After two months you would think they had some proposal to make. Every meeting I'm at, Ms. Pool will tell you this, I say what is your counteroffer? I understand everything can be improved. Everybody has a different viewpoint. Every time I've become a broken record, where is your offer? What is your

suggestions? I have heard nothing. Mr. Gullahorn has heard nothing. Ms. Pool has heard nothing. Brian Thompson, the head of the ethics review commission subcommittee on this has heard nothing. Let me be clear about something else. The fundamental premise of the engineers, and I'm not talking about the detail. The fundamental premise is wrong. Their argument that as engineers they do not have to register at the state so they should not have to register at the city is wrong. I handed you an opinion.

[10:41:05 AM]

It is 23 years old. From the ethics commission, which says clearly if you lobby to influence state action any, you can read it, any state action, I put the tab on there, you are a lobbyist even if you're an engineer. My point is not that everything in the resolution is perfect. My point is the argument that they're not lobbying when they're seeking city official action is not true. Last, I have tried to participate as best I know to talk with people, to discuss this issue, to bring people into process, to deliberate, to do give and take and not have the usual Austin war. But I cannot negotiate when people do not wish to meet or refuse to meet or are ill prepared to meet or whatever their problem is won't meet. We have been at this process, it was raised a year ago, the lobby law was broken. It was put in front of the ethics commission in June. Councilmember Pool's resolution has been in front of y'all for two months and I will say again there is not one suggestion of any kind, oral or written, reasonable or unreasonable, short or small from them. That is very difficult to deal with in a democracy and frankly as I've said before it is disrespectful to your colleague. So I'm going to say I think they're stone walling. I do not think they want reform. I think they want instead of jaw, jaw, war, war. Well, we're not going away.

[10:43:10 AM]

I'm happy to answer any questions. >> Renteria: I was reading this letter from the engineers and recall and they said that with this resolution here it would basically say not allow any of the architects, landscape engineers to serve on boards and commission. Is that true? >> No. They -- first of all, they make the argument that every engineer in the city and every architect would fall under this resolution. That is not correct. If they think there's language that suggests that, what reasonable people do that are professional is they suggest changes. They have suggested nothing. The second thing is Mrs. Pool -- Ms. Pool has said and I have said and Jack Gullahorn has said, we need to look at the commission process, okay? We need to look at the conflicts of interest for service on commissions. And that needs to be dealt with separately than the lobby provision. Frankly, Councilmember, we can't get people to enter into a dialogue, a discussion about lobbying. The last thing we need to do is bring something else in it to make it even more difficult to get people to engage. But my personal opinion, and Mrs. Pool has indicated that she's open to some of this, but my personal opinion is that the conflicts of interest provisions for the commission service is broken too. It is not a good process for dealing with conflicts, and

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that it is not enforced. And I think it needs serious reform. But the problem is I don't know how to have a discussion when people don't meet and they don't make counterproposals. And they just stonewall. I think, frankly, they think we are engineers, we don't have to do this. Well, you know, we live in a community and you have to participate in the process. So the answer is to both of their arguments, no, that is not correct, but they wouldn't know because they refuse to engage. Now, why they refuse to engage today you will have to ask them. All I know is I've been around a long time, 30 years I've been a lawyer. I've been working at the state and at the city level on advocacy. I have never seen people refuse to engage like this. Why I don't know. >> Tovo: Thank you. Councilmember Renteria, did you have a

question. >> Renteria: No. >> Tovo: Councilmember troxclair, did you have a question? >> Troxclair: Are there any other speakers on this item? >> Tovo: Mr. Louis was our last speaker. >> Troxclair: I guess following Mr. Louis' comments, if you want, I would be interested in hearing from the people who are here that he made the statements about so we could understand if everybody is on the same stage going forward and if we could come to some resolution since they didn't use all their time. >> Tovo: Vice-chair troxclair you're happy to answer any questions of the speakers. >> And you're welcome to speak with me. You're the only councilmember I haven't met with yet. >> Troxclair: I know you reached out to my office a couple of months ago and my chief of staff offered to meet with you because I was busy that week and I think that that offer was declined. But if you would like to

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meet again -- >> That is not correct. Y'all had to move the meeting. But I will look forward to meeting with you and having a discussion about it. >> Troxclair: Okay. Thank you. >> Tovo: Vice-chair troxclair, did you want to ask Mr. Stamply a question since he was the main speaker? >> Troxclair: Yes, or whoever wants to come and speak. I just think there were some pretty pointed accusations made, so I just want to make sure that y'all had the opportunity to explain what your participation is. >> Yeah. I don't believe that this is the forum to be able to counter exactly some of the things that Mr. Louis has accused our group of. >> >> Troxclair: I don't mean to counter, but if -- I would like for everybody to be able to work with councilmember pool as well as the rest of the committee members to see if there is some kind of middle ground. >> Councilmember pool, and this is the first time we're meeting in a public forum, but we have requested a meeting through her chief of staff. I don't know if it's gotten to her. With the group that we represent. I know that she has reached out to do a small stakeholder group and we're having problems coordinating. One of the reasons is there's a lot of people involved that we joined together as a coalition is mainly because there are three of us, and I serve as the spokesperson, one person is a lot easier to coordinate than 30. And so we're all committed to that. But our understanding of the process and which I said earlier that we are committed to doing, is working with Brian Thompson and the working group and the ethics commission to provide our counter, which what I said earlier, is that we are nearing that. We just received the draft from our counsel yesterday afternoon and we are in the process of reviewing it. But we do intend to do this. We do intend to be part of this process through the commission and through the workshop, not individual side meetings. We don't believe that's the right process. >> Troxclair: So you do

[10:49:13 AM]

plan on coming up with some kind of proposal or suggestions? >> Yeah. I have it right here. It's a draft of it. We're in the process. It's very complicated. Again, these are legal issues. I am an architect, I am not an attorney. >> Troxclair: Okay, okay. Great. Thanks. >> Pool: I have some questions. Mr. Stamply, nice to meet you. And I would like to renew my request that you all hang around a little bit and we can talk when this meeting is over, although I do have a committee meeting that I chair this afternoon, but I will make time to meet with you. And my chief of staff has in fact tried to find a time repeatedly to meet with you. We don't need to meet with 30 people. I think that's one reason why you have been chosen as the spokesperson, which is how you characterize our role, so I think that would be appropriate. Are you clear on the concept that boards and commissions are not part of the proposal that I have laid out? >> Restate that. Are you clear that -- you're talking about if you're a lobbyist you can't serve. >> Pool: Right. >> Currently that is the ordinance, but we're being told by our attorneys that it's very clear that that is the case. And for a period of three years afterwards. >> Pool: So that language is not in the proposal, Mr. Stamply, and I think your attorney if he's reading it properly would see that, but I would be happy to

have you show me where in the proposal that is included and we will have my chief of staff will come downstairs. I think she's listening to what -- to this conversation right now. And she'll have a conference room when I leave this meeting here today and we'll sit down and talk about things. Thank you. >> Tovo: On okay. Thank you. It sounds like there are many meetings yet to happen, lots of discussion yet to occur, much important work to be done. Okay. We're going to move on to item number 7. Thank you all for participating in the conversation. This is the proposed amendments to title two of the city code that our city auditor has been working on

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with the ethics commission in response to previous items from the last council. >> So quickly, this item, like the prior item on lobbying, there was a brief discussion at the ethics review commission last night, but will be scheduled for further discussion by the ethics review commission and hopefully a proposal to come forward to this committee at their November 10th special called meeting and our next meeting here is November 16th. The timing works well. But I did want to go through a few high points here just to remind you of the conversation that we're having between the auditor and the ethics review commission and what we're trying to address. So -- and I have a clicker even. So first just a reminder, in addition to the audits, like the one that we presented earlier and the special requests that we do on behalf of the council, we also have integrity services group that does investigations of fraud, waste or abuse and this is the focus of the code changes we've been discussing. Just the timeline on this, in 2014 we identified a need to clarify responsibilities and processes related to our investigations, specifically investigations of code of ethics violations, which a large portion of our work falls into that category. So a code of ethics violation includes misuse of city resources, conflicts of interest, abuse of official capacity, various parts of the code of ethics that are also things that we investigate. So we identified a need to clarify responsibilities between our office and the ethics review commission. In January council approved the first amendment towards that. And I'll mention what that specifically was in a second. And then now the ethics review commission and the city auditor were working together to bring remaining revisions and that's the two sections of the city code, section 23, which is the responsibilities of the city auditor, and then section 27, which is ethics and financial disclosure. Those two sections of code will be coming back with

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revisions. Some of the procedural changes within there that we've incorporated into the code changes and the first two are already incorporated into our internal processes, which is any subject of an investigation approximate will have a right to representation. The subject and any named involved party other than the subject will have an ability to provide a response to the report before we issue it. So those are already in our processes, but we would like those to also be in code. And then we're establishing processes for referrals between the two groups. And then having some periodic reporting on our investigations. What kinds of things we're seeing, what's been substantiated, et cetera, both from my office and from the fraud, waste and abuse investigations conducted by the city manager or his designees. So the change back in January that was made. Basically the whole concept of the changes is to make sure somebody that is investigated either by my office or by anybody has due process, has an ability to have their side of the story heard and there's a kind of independent review of the results of the investigation. For civil service employees if any action is taken as a result of the investigation that's going to be handled through either the municipal service commission or one of the state civil service systems which will be for public safety. So those are the ones that through the amendment back in January have been separated out. So what we're left with are our non-civil service employees and officials and just

the term city official really encompasses both employees and appointees of the council such as our city commissioners. We still have these two groups remaining and basically the concept is that for those groups for -- actually, let me go back. The types of people incorporated in that first group include all city executives, our assistant city attorneys, temporary employees because they are not covered by municipal

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civil service, and our council appointed commissioners. So for that group what we're saying is that we would conduct the investigations and if we substantiate an allegation we would then file a complaint with the ethics review commission for them to have a hearing. That adds the piece that for municipal civil service commission employees if action is taken that will go to the civil service commission for people not covered by civil service, they would go to the ethics review commission. Then there's another piece and in the backup we had two proposals, kind of a proposal A and proposal B, but based on the suggestions that we've been having and the conversation last night at the ethics review commission proposal A has disappeared and we're really left with, unless there's serious objection from any of the involved parties, and I'm not expecting there to be, but that with the auditor hiring an external investigator for allegations against council, council staff and the city manager. What that does is it provides a little more independence. I contend that I should not investigate my bosses and that would be the full council. So we're proposing that we would manage an external investigator to conduct those investigations and that external investigator would present the results to the ethics review commission. One final thing that I want to make sure is on your radar on these changes is that the revisions that we're talking about for these two groups expand the jurisdiction of the ethics review commission so right now the ethics review commission has very specific jurisdiction over certain sections of code, primarily the code of ethics, but also campaign finance, lobbying, some of the things that we've been discussing on and off in this meeting. But this revision for fraud and -- fraud, waste and abuse violations by the parties listed above, if we substantiate those allegations, regardless of what part of code it is, whether it's in the code of ethics, whether it's in the charter, whether it's in another section of code that institutes fraud, waste or abuse it would go to the ethics review commission. So that is -- and that's a discussion that we're having

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with the ethics review commission to make sure they're comfortable with that, but for those specific -- we don't want anything to end up with us without a place to be heard. So if we complete an investigation we want there to be a place for that to be -- to center basically -- to have basically a public discussion, whether that's with -- for the civil service employees that's already handled, but for these remaining groups we want a location for those, so that's the reason for the expansion specific to fraud, and then I think the -- there are some sections -- 23 is the city auditor section. I think we're down to near final draft of the changes to section 23. But in 27 there are some other things that the commission is discussing that don't really involve our relationship, but is more about how they get complaints from the city clerks, process changes there, what powers the commission has maybe requiring one of the things they've been talking about is requiring the subject of a complaint to actually appear at the final hearing. And so there are some various discussions that they're having specific, maybe outside of the relationship with the auditor that they're having. And those need to be ironed out and my hope and expectation is that that will be done for the -- by the November 10th meeting with a recommendation back to audit and finance hopefully with a final list of the proposed changes. >> Tovo: Great, thank you. At that point we would be able to make a recommendation to council, so we anticipate that all that work will be wrapped

up by about mid November in time for our November 16th meeting, I think it is? >> Yes. >> Tovo: Super. Any questions for the auditor at this point? Okay. Super. Councilmember pool, do you want to -- do you want to comment? >> Pool: I wanted to say I think it's a good proposal. >> Tovo: Okay. Thank you for your work on that issue. Number 8, and our almost last item.

[10:59:20 AM]

, Is a draft resolution that has come to us sponsored by the mayor's office for our review and our consideration for recommendation to full council. So I'll give you a minute to you find those items. >> Pool: Who is presenting on this one? >> Tovo: I don't believe we have a presenter. It is an item sponsored by the mayor and I don't see the mayor here so it will stand on its own and we'll open up the discussion now about this resolution. >> Pool: I'll just jump in and say I looked at -- >> Tovo: I apologize. We do have two speakers signed up on this item so if you would like to go -- would you like to make your comments and then we'll hear from the speakers? >> Pool: That would be great. Maybe with a we could do is read what the content is so folks know what we're talking about. It has to do with dark money and this is maybe the mayor pro tem could read that into the record and I just wanted to say I did look at the short video that accompanied this information. I thought it was really useful as a discussion of how money has pretty much taken over our campaign finance and too dilatorious effect. >> Tovo: Thank you. I would be happy to summarize and just for the public's information, this is posted as backup both the item referral and the full resolution is posted in the backup for today's meeting. But in essence the resolution would if passed by council direct the city manager to review other injure additions, dark money laws and proposals to identify those timely and effective laws that ensure comprehensive disclosure of election contributions and expenditures that are funneled

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through 5013c nonprofit organizations and other nondisclosing entities and persons, and it would also recommend a proposed comprehensive dark money ordinance such as defining political activity, setting an appropriate level of political activity to trigger disclosure, specifying the form and time of disclosure, distinguishing among political contributions, and general operational funds used for political purposes using last in, first out accounting means for identifying the source of political expenditures and regulating covered transactions and other means to use multiple entities to -- and integrate the proposed ordinance with the state and city's other campaign disclosure laws. Very important and we appreciate the mayor bringing this forward. Mr. Lewis, you are up first. We've got two speakers signed up, Fred lewis and David king. >> Hello. >> [Inaudible]. >> If I knew how. I talked to the mayor about this in the last election and he thought it was something that we should address and he is bringing it in front of y'all. Basically what dark money is is when you send political money through a nonprofit or other entity that otherwise does not have to disclose political contributions so that you can hide the source of the funding. The reason that it's done usually is because either the source of the money is exceedingly controversial or there is a political price to pay for whoever the contributors are. So the bed rock of my campaign finance system is disclosure. That is the minimal regulatory

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system. At the federal level since citizens united, we now have hundreds and hundreds of millions of dollars of dark money. At the state level in the last election we had 1.4 million. At the city we started seeing it in the David butts ad where we couldn't figure out who was behind it, and in the money that was spent out of south Carolina on Robo calls against then-candidate Steve Adler. One of the sad things

in this area is that people are copycats. So if there is a loophole and it's usually first found at the federal level, then it's exploited down the system. And so this is a proactive attempt to ensure that the citizens of Austin know who is spending political money. >> Tovo: Questions for Mr. Lewis? Mr. Lewis, I have a question. >> Sure. >> Tovo: An important point of the resolution and an important point I think in our consideration is the timing issues at play here given that we have an election in November 2016. Would you like to speak to that? >> I think it would be really good if it was put in place as soon as possible. I would hope that the legal department would look carefully at California's law, and there's a federal disclose act. There are some other model laws in that they reduce a document quickly for you all, that you would be able to vet it and perhaps pass it in the spring so that it can be put in place, let's say, by early summer before things get heated up. >> Tovo: Thank you. And I heard you say California has a model law. If you think of any other model laws that we would want to bring to the attention of our legal staff, if you could forward them, that would be

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super. >> I have also asked the campaign legal [inaudible] Which was founded by senator McCain if they would be willing to help the city in drafting this. They have worked on those in California and federally. I think they are the experts. They are bipartisan, they are both republicans and democrats, and they are willing to help and so I hope the city takes them up on that offer. >> Tovo: Thank you. So you asked them if they were willing to help and they have returned the answer that they are. >> They said they would be glad to. >> Tovo: Super. That's an important piece of information. Our last speaker is Mr. King. >> Thank you mayor pro tem and councilmembers. I'm just really here to urge you to take action on this as quickly as possible and hopefully you can get this into effect before the next election cycle. And, you know, I would just like to suggest that if for some reason it doesn't get implemented before the next election cycle it would be telling for candidates and the council to go on record as saying they will not accept dark money for their campaigns. I think that would be very important, to be public electrical I stated as a candidate you would not accept dark money. I think that sends a strong message to our community. And as a citizen who lives here and who has been [inaudible] In my life and my money into this community, you know, I don't want somebody from outside the city to be able to dump their money into this city and influence politics that happen here and get candidates elected that don't really -- really don't care about our values here or trying to change our city in ways we may not want them to be changed. I think that's very disconcerting that that type of activity has been occurring and I think it will continue

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to occur and maybe even increase. I also think it's kind of interesting that, you know, when citizens united passed where corporations are now individuals and they can spend as much money as they want on political campaigns, you know during that process justice Kennedy wrote that, you know, transparency about the sources of political spending enables the electorate to make informed decisions and give proper weight to different speakers and messages and that's really all we're asking is to find out who is providing those fundings so we can evaluate that message. Because a message is not only the content of the message, it's who is providing that message. That's equally important, maybe even more important. I applaud you for taking this action and hope you will move forward with all due haste. Thank you very much. >> Tovo: Thank you, Mr. King. I appreciate your comments. I just want to point out that if -- if the dark money funds are being used by an outside entity, a candidate wouldn't know about them because there's a law prohibiting the coordination between a candidate's campaign and any outside organizations that are working in support or opposition to those candidates. So they are required to

provide information to the candidate about -- to all the candidates about how much money has been spent in the race, but they are prohibited legally prohibited from coordinating with that candidate's campaign. A candidate could say I don't want dark money being spent in this election, but they wouldn't have an ability to enforce it without breaking the law. >> Okay. >> Tovo: But thanks for your comments. I'm obviously not a lawyer, just somebody who has been through it a couple times so that's just my thoughts on that particular suggestion. Okay. Colleagues, questions, comments, ideas? Vice chair troxclair. >> Troxclair: I just have a couple of general thoughts. First, I mean this seems like a worthy resolution so I'm glad that we're talking about it and pursuing it. I just have a couple of

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clarification questions which I guess -- I don't know who would be the right person to answer them but I'm going to throw them out there in hopes through the conversation I can find an answer. I want to understand first, if there are 501c4's who are not involved in political activity and if so how are they out there and would this negatively impact their ability to be involved in whatever they're involved in. I just don't know the answer to that. And then second, I'm wondering about entities who are maybe operating on or getting involved in a statewide issue, for example like the constitutional amendments that are on the ballot right now, if an organization is trying to do a statewide campaign for or against a proposal like that and we only have these regulations in Austin, would that require people who contributed to the cause I guess from Houston or Dallas, their information to be made public, and if so, I don't know, are there any -- are there any legal issues with us having different disclosure requirements than other -- than other cities in Texas because I don't know -- so those are just the two thoughts I had. >> Tovo: Let me capture them. So if this committee passed a recommendation to the full council to initiate an ordinance, I would think there would be a couple opportunities to ask those questions. One would be through the Q and A process and the [inaudible] Writing process, but I want to make sure for our notes as it captures this meeting that we've got them. Would this have an impact on 501c4s that are not engaged in political activity and your

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second question is whether -- is really about the relationship between statewide political activities and local contributors to those political initiatives. >> Troxclair: Right. >> Tovo: And whether there would be different -- how the disclosure -- I'm not articulating this properly but maybe we can work together on language. >> Troxclair: I'm probably not articulating it properly either, but if somebody wants to contribute on the we're for proposition 1 in Dallas does that mean their name and information would be made public in Austin and if so are there any legal issues with making sure they understand that or -- because even though -- because the relations would be different in the cities. And then the first question not only would this impact 501c4s but also what would the -- what would the impact be and would there be any concerns. >> Tovo: But just for those 501c4s not engaged in political activity, so would it have an effect and if so what? >> Troxclair: And I know that -- I mean it's a tough question to ask because I think that's probably part of the loophole to begin with is 501c4s are purely educational when in reality a lot of them are not purely educational. I think that's maybe where you get -- it may be a gray area and it may be something unavoidable and I don't even know if there are 501c4s who don't participate in political activity. >> Tovo: Good question. >> Troxclair: But I generally support the resolution. >> Tovo: Okay. Terrific. Councilmember pool, did you have a question? >> Pool: No, I want to make a motion and I just wanted to make a statement. >> Tovo: Okay. >> Pool: So I would move that we adopt this draft resolution and send it forward to the full council so that city staff and the city

[11:13:27 AM]

manager can draft an ordinance and provide the commentary in answer to any questions that may arise related to this dark money proposal from the mayor. >> Tovo: Councilmember pool moves that we recommend approval of this to our full council. Vice chair troxclair seconds that. And we have captured the couple questions that should go forward unless -- we'll capture them in the report and you can decide whether or not to submit them through the Q and a process. >> Pool: 501c4 -- isn't it the educational -- Fred is an attorney and as we know he's worked on these issues. I want a definition of 501c3 and 467894 is the one conducted out of the body in order to conduct political activities. Is that correct? >> Tovo: Mr. Lewis. >> Yes, that's basically correct. A 501c3 is supposed to engage in no political activity directly or indirectly. A 501c4 is supposed to engage in an in substantial amount of political activity. That imprecise phrase has allowed entities that do hundreds of millions of dollars of issue ads to do 49.9% political advertising to the tunes of tens of millions of dollars. So to answer your question, this resolution would -- or law, as envisioned, would have no impact on a 501c4 or any entity that engaged in nonpolitical activity. It would require 501c4s over a certain threshold, whatever you all determine, 25,000, \$10,000 of political activity to segregate the funds so that

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you can see what went for political activity and what did not. But if a 501c4 wants to engage in political activity and does not want this to be a burdensome process, they just have to set up a chart of accounts that separates out the money that goes for political activity and that that doesn't. As for the local issue, there is -- this resolution cannot legally impact anything dealing with a state level issue, a state level candidate, anything outside the city of Austin. So any statewide proposition, candidacy, anything, we can have no impact on. We don't have jurisdiction over anything but our own raucous elections. [Laughter] So however, the state is very clear, the case law is very clear, actually governor Abbott wrote the leading opinion many years ago. Cities cannot do less disclosure than the state requires, but they can do more. And so long as this does not require less disclosure, which it will not, it is fine. I do want to say this because I feel that I should say this. I think the vast majority of scholars in this area do not believe there are discussional issues of requiring 501c4s that engage in significant political activity from disclosing their contributors. There are, however, people that make that argument and I want you to know that I think that is not good public policy and I don't agree with the legal argument, but there are people that are adamant that the disclosure of their

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identity when they engage this the political process is harmful to them. >> Troxclair: Can I ask a quick clarification question? >> Sure. >> Troxclair: I understand we don't have control over, you know, state elections, but that -- so what you are saying is this would only be applicable to city elections, not necessarily activities that happen within the city. >> That is correct. >> Troxclair: If somebody wanted to send out a mailer they could send out a mailer on a statewide proposition and this would not apply to them. >> It doesn't matter where the person resides, all that matters is it has to involve the city of Austin election whether a ballot measure or candidate. We can have no impact on anybody else's elections. If somebody wants to engage in dark money from Austin in Chicago, they have all the right in the world to do that until Chicago passes a law. >> Troxclair: Okay. And then on my first question, you're saying that the term that invites confusion or a loophole is insignificant, is the insignificant political donations and that needs to be clarified or further regulated or the intention of the resolution would be to clarify that? >> A little different but that's the gist of it. The IRS is supposed to regulate 501c4s, okay?

And they are not really supposed to be engaged in political activity. They can do a very limited amount. That was always the understanding. The IRS has stopped enforcing our laws, okay? For whatever reason. I think complicity by both parties, frankly. And so as a result 501c4s, many of them engage in no political activity still, but a number of them have become vehicles to hide the source of contributions. And for those where it meets the threshold which you think

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there are political activities significant enough, you have to disclose the contributors to the political activity, in and out the contributors to the nonpolitical activity. No one wants that to be disclosed. And the easiest way for the nonprofit to do that, they don't have to, but it gets very complicated if they don't do it the easy way, the easy way is set up a separate accounts and the money that goes into the account goes to political activity and that's the only funds that go for political expenditures. It gets much more complicated when they don't want to do that. >> Troxclair: Thank you. >> Tovo: Councilmember Renteria. >> Renteria: I've heard earlier that there was a I guess a phone call made from out of state by a group trying to influence our election. How would this be -- how would this ordinance or if it ever becomes -- if it does, be able to enforce these groups that are operating outside the state? >> It -- we have jurisdiction over entities, theoretically we have jurisdiction over entities that try to influence our election even if they are in China. Okay? Because they are trying to influence our elections. The way this is designed to be is you should be reporting your contributors whether an independent expenditure or otherwise through a P.A.C. Or you should be reporting your independent expenditures and the contributors independent expenditures. If you are not, anyone else who is not reporting what you define as significant political activity through either a P.A.C. Or an individual expenditure gets caught in this law. It's for everybody including out of state committees that will not disclose for whatever reason they are contributors and they engage in whatever amount you think is a proper

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threshold. What I mean is you obviously don't want to mess around with somebody who is not disclosing their donors and it's \$500. It would be nice, but, you know. You have to have some threshold. At the federal level they have suggested 2500 -- 25,000. At the local levels it's varied between like 2,000 to 5,000. But the bottom line is it's not just 501c4s, there's a lot of other entities or vehicles that creative lawyers use to run political money through that are not P.A.C.S and do not consider themselves to be engaged in independent expenditures. And this is to capture everybody who thinks they are not captured in the other pots. >> Troxclair: One more clarifying question as I'm trying to understand what the jurisdiction is here. >> Sure. >> Troxclair: If there's an entity that spends money, let's say oh, I guess in a city council election, but also in a presidential election, are they required to disclose every -- they would only be required to close the contributors that they use money to influence the city council election? >> That's right. If we took a 501c4 and let's say it engaged in state level political activity, federal level, cities across and then Austin and then engaged in a nonprofit work, the only contributors that this is -- and activity this is geared towards is that that impacts political activity in Austin. Everybody else is -- >> Troxclair: How would they know? Say someone writes a \$10, \$100 check to an organization that they support. How do they know whether or not their money is going to the city council election -- because then the organization takes the pot of money and divides the money on whatever election they want to spend the money on, right? How do they know whether that \$100 went to city council or whether that \$100 went to the

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presidential race? >> That's a very complicated answer but I'll try to give you the gist of it. A wise nonprofit, 501c4, set up a separate segregated account and you say this money just goes for political activity in Austin. If you don't want to do that and you just want to run it through the general fund, there is -- there is [inaudible] Last in first out accounting and other mechanisms that are used. Basically what happens if you say the money is going for political activity in Austin, it counts as money for political activity. If you say in your interactions with the entity your money is not going for political activity in Austin, it's not disclosed. After that, it's last in, first out in which they just back it out until you reach the amount of money necessary for the expenditure. >> Troxclair: Okay. >> And so it's complicated. The gist of it is if you want to do easy, I just set up a chart of accounts in quick books and you put the money that goes to city election political activity and you spend the money out of that pot and everybody -- it's real easy for you. If you want to throw it in the big pot, then it gets real difficult for you. >> Troxclair: And then the person would know -- would have the option when they are making a contribution which direction it goes. >> Absolutely. And they have to give notice to people and there's all these other things. You don't want to sand bag anybody, but you can't just say, well, I just gave it to them, I just gave them a million dollars and I didn't tell them what to use it for and they only spent \$200,000 on animal rescue and today they are not spending 800,000 on independent expenditures. I didn't know they were going to do that. Basically if you dedicate to it political activity or dedicate it not to political

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activity, that is honored. >>>> Tovo: Thank you, Mr. Lewis. Any other comments or questions on this item? Okay. There's a motion and second. All in favor? And that passes unanimously so that's a recommendation to the full council. Our last agenda item is a discussion of future agenda items so we have number 6 and 7 coming back to us hope for final consideration in November. I understand we have a few audits coming forward in November, and anything else anybody would like for consideration? Okay. Hearing none, we stand adjourned at 11:27.