

City Council Special Called Meeting Transcript – 2/6/2018

Title: ATXN 24/7 Recording

Channel: 6 - ATXN

Recorded On: 2/6/2018 6:00:00 AM

Original Air Date: 2/6/2018

Transcript Generated by SnapStream

=====

[1:40:43 PM]

>> Tovo: Good afternoon, I'm mayor pro tem Cathy Cathy and I'd like to call this special meeting of the city council to order. The time is 1:40 and we're meeting in the city council chambers. >> Casar: Good afternoon, everyone. Thank you so much for coming together for this work session on the paid sick days ordinance. I thought we had a good work session last week. For today's meeting I want to pacifically get two things -- basically get two things done. Lay out any amendments that folks may have. I've brought a couple that have been requested by folks in the community, mostly clarifying amendments, hear what folks' questions and concerns are, and then at our next work session, our third on the issue, hopefully we have any last badges of amendments or questions so there's an expectation in the community about what we'll be voting on on the 15th, next Thursday. I want to provide y'all with two updates. One, I want to provide y'all updates on organizations that are supporting the current organization and that will be present on February 15th for the vote. And then I want to walk people through some of the compromises that have been made on this ordinance so far so that as we discuss amendments or questions people can have context about the compromises that co-sponsors had to make. So first I want to hand out some of the supporting organizations because the list keeps growing every week. So on as you will get on your list, in the past the Travis county democratic party passed a unanimous resolution in support, but this last week the Texas democratic party, so the statewide organization, have signed on in support of this ordinance. Their statewide platform is a minimum of seven paid sick days for all workers in the state so this lines up pretty well with that, as well as local democratic clubs, the Progressive

[1:42:46 PM]

democratics of central Texas, that chapter. The the Austin democratics posted last night as well as the liberal democratics of Austin ordinance that we have right here. Several other safety net organizations have signed on in support. We've talked about the safe alliance who was here for the Orange resolution, but recently echo's board voted in support of the ordinance that is posted as did the center for health empowerment clinic, which is one of our local prep clinics, citing that you can use sick days for preventive care such as prep as well as if you have an emergency. The national Latina institute for reproductive health has signed on, planned parenthood as well as people's community clinic. There are

a variety of workers' organizations that are supporting this, but we do have some new ones. While the local labor central council, the local group of unions, unanimously voted to endorse in the past, recently the Texas a alcio, the statewide labor unions signed up as long as organizations like workers defense, unite here, the young active labor leaders. And actually I think just last week our local ems employees' union. So our ems staff that are on the front lines of this everyday, the ems association is in support of the draft ordinance the other is Texas freedom priorities, the project start bid speak seal records, the dsa Austin, left up to us, moms rising and fund for reproductive equity as long as others, but that is who is on this list. >> Pool: Are the same ones provided by workforce Austin or are they the same ones there. >> Casar: This is the most up to date list because the Austin young Democrats and

[1:44:47 PM]

liberal Austin democrats voted just last night and I think the Texas afl/cio and the Texas democratic party were very recent so they may be new. I don't have that website up in front of me, but some of these are new additions as well as the ems is a new addition. >> Pool: I got you were giving us the new ones. I wanted to know if the ones that had been listed on the message board previously in January, if those were -- because I don't see them all on here, so I wondered if some people had dropped off. >> Casar: I don't know of anyone that has dropped out of on that list. We may have to go and compare, but this is trying to do an update and we may not have had the previous groups. The workforce Austin is supportive and this is trying to lay out some of the new ones. >> Pool: Because work strong is not on here. >> Casar: It is not listed because I think they are a coalition of some of these existing groups. >> Pool: Thanks. >> Casar: Of course. So we want to give some context on the ordinance before us. So many benchmark cities have uses about immediate health and safety in their ordinance. They'll let you take safe days if school is closed, if there's a weather wasn't and we thought that since we said this was going to be a sick time ordinance that we would not use uses like some of those cities have added that are a compromise of health and safety. Many cities that require as soon as an employee is hired that they be hand add piece of paper that are list under the ordinance. We did not include that. Instead we mirrored our rest break ordinance that requires a poster be put up where other posters are.

[1:46:47 PM]

So that's another compromise that was made between us and what typical benchmark cities include because we wanted to make sure that we are taking in stakeholder intermediate for people about concerns or skepticism. We also had advocates who did not want there to be any requirements for a doctor's note for use of sick time. They strongly said they didn't want that doctor's note requirement because some people don't have health care and if you don't have health care then going to the doctor is extremely expense active and you wouldn't be able to use the sick time. So we made a compromise there that you can be asked for a doctor's note even if you don't have health care after three days of an absence from work. Some employers brought up questions about their existing policies if they already give you pto, if they already give you vacation days, if they already give you days upfront are we going to

make them change their policies? And we worked very hard to craft language that was very chewer that we want to respect and recognize in compliance ptl policies, vacation day policies, policies that don't require you to accrue your sick time. So we worked with the law department and looked at other cities to address those issues. On amount of sick time, the most common number of sick days brought up in the stakeholder process was 12 days of sick time a year and we decided to put forward the co-sponsors an ordinance that gave eight sick days as the cap, the most that anybody would be required to give, given that the benchmark is somewhere. Many cities have between five and 10 days as their requirement, so eight we thought was a fair compromise. We also did not require that tipped workers get paid their tips or their overtime when they are out sick. That was something that was brought up by many restaurants and so we included in the ordinance language to address that

[1:48:48 PM]

concern. And other cities have private right of action where employees can sue employers for not giving them their sick time. They have more significant fines. And we thought that since the purpose of the ordinance is to get people sick time and the purpose is not to give fines to businesses, that we would make compromises in the enforcement section that max out any penalty at \$500 per violation, and that give employers a chance to voluntarily comply before there is any fine. We also from our December meeting I heard councilmember pool's concern about workers really being able to make sure they can take the time, and so we made sure to include a clause that protects workers from retaliation. So to try our best to address that concern and it's a legitimate one. In Minneapolis where Spencer cronk is coming from, they have laws against retaliation and there was in the news a worker that was denied ability to use sick time in a convenience store and the city of Minneapolis was able to use the retaliation clause to protect that worker. So councilmember pool, I heard that concern in December and we made sure to include something in the ordinance to address that. So I want to give that context of the growing supporters list and the compromises so far so that I and the co-sponsors can answer folks' questions. I have a couple of amendments that I want to put out there at some point during this meeting to make further clarifications, but I'll cede the rest of my time to see what folks want to talk about. >> Kitchen: Mr. Casar -- who is running the meeting? At the appropriate time after you lay yours out I also have an amendment to that.

[1:50:51 PM]

>> Pool: So do we have a new version of the ordinance to work from? Is that what you were passing out? And is it red-lined to show where the changes are. >> Casar: Mayor, there is an ordinance posted in backup and there are only two changes. Thank you for bringing that up because it was helpful for you to say that. One is that we heard that they wanted time to adjust to the ordinance so we moved the potential date -- nobody could be find, we moved that date to nobody could be fined until October. So if we passed this there would not be fines until October. And then there was a very small clarification which is that where employers have to provide written notice, be able to provide written notice to

employees of how much sick time we have, we cleaved that that written -- clarified that that written means actually written. Some say I have an electronic system, yours says written, so that one seemed really easy. So that's all that was new, but I thank you for bringing it up because we did move back the date of fines back to October given that we've heard some concerns about folks saying they want some time to be able to get ready for this. >> Pool: I have some other questions too. This is just a discussion about this, right, for however long? So I'll yield and let some other people ask questions, but I maybe the mic will come back around. Thanks. >> Mayor Adler: Further comment? >> Casar: I can lay out the couple of amendments that we've heard about from the community. >> Mayor Adler: Why don't you do that. >> Casar: The first one I'm handing out is a clarification. Some folks in community have raised concerns, and people

[1:52:51 PM]

that are very supportive of the ordinance have said they really wanted to make it clear that an employee would have to ask for their sick time before using it. That is that nobody could miss work and then retroactively say they missed it because they were sick. So that's what my understanding of the ordinance already was, but to make it abundantly clear, we've suggested some language that says that employee, if they have earned sick time and makes the request for earned sick time before their scheduled work time that that's when they could use it. So this is I think a clarification, but again we've been fielding lots of calls in meetings so I think that would be a useful amendment and I would like to bake that in to the discussion on the 15th. >> Mayor Adler: Would you talk about the word unforeseeable in the next line? What does that mean? >> Casar: The ordinance says that employers can ask for advanced notice. It basically says you can ask employees to make a timely request, however, if somebody breaks their leg right before they shift they couldn't have let you know the night before that they were going to break their leg. So employers have to give the sick time for unforeseeable circumstances, but employees still have to make the request before their scheduled work time and employers are allowed to ask employees to give advanced notice. It's just when something is unforeseeable and you can't give advanced notice, then in that case workers should just let their employers know as soon as possible, but in no case could a worker make county for sick time after missing work. They would have to make it before. >> Kitchen: I passed out an amendment that is in response to some concerns that we heard from an

[1:54:54 PM]

organization, I think it was the hispanic contractors organization. >> Mayor Adler: Do you have another copy of that? >> Kitchen: I passed it out. Did everybody get it? >> Mayor Adler: I might not have been here when it got out. >> Tovo: Councilmember kitchen, is it the one that says "Add after section, the section as not -- is that one yours? >> Kitchen: That one. And what this does is it adds a provision that says this section is not creating a new requirement for certified payrolls. The concern that was raised is that this would be requiring a change in the way that businesses handle their books that and that would

be required. This actually needs to go in two sections. So because the other concern was that the investigation would create a requirement for a new -- for certified payroll. So I want to make that clear in the two places in this document where it's relevant that this doesn't create a new requirement for a certified payroll. Which is not something that's required right now. >> >> Mayor Adler: Ms. Houston? >> Houston: Thank you, mayor. I have a question for legal staff, please? Is there anybody here. >> Mayor Adler: You have some legal staff on the dais. >> Houston: I'm sorry, I was looking out there. >> So am I? [Laughter]. >> Houston: I'm trying to figure out there's some -- in the labor code title 4, employment services and unemployment, chapter 207 regarding benefits, will this in any way have a conflict with that part of the law?

[1:56:55 PM]

And I can give you what I'm talking about. My concern is how does the state law interact with what it is that is being discussed today. >> So we'll take a look at it. I know they wrote that down, but we'll take a look at it and get back to you on that. >> Houston: Thank you. >> Mayor Adler: Mr. Flannigan. >> Flannigan: Well, I just want to say that I'm really uncomfortable with what we're doing right now. We set up a two week agenda process specifically so we could have a week in private meetings, working with staff and stakeholders. What we have done today is preempted all of that work in order for us to ask all those questions in public. I'm not going to ask questions today because the questions I have asked advocates and other organizations are not questions I expect my colleagues to have answers to. I don't think this is an appropriate way, I don't want to set this as a new process we follow on other future ordinances. The intent of the two-week agenda process was to give us a week to work with our staffs, to work with professionals, to work with advocates in stakeholder meetings, not to preempt a council meeting. I am retaining my right to bring amendments even on Thursday. And I think we all have the right to continue to bring amendments on Thursday and just because it's not daylighted today or daylighted on Tuesday does not make it invalid at the council meeting. And I don't think that's something that we want the community to start thinking we've done today. There are organizations that are concerned about this ordinance. I'm a former business owner, current business owner, and I've hired employees and I've managed employees and while the intent of this ordinance is something that I believe in, there are some pretty broad enforcement mechanisms and broad requirements that I think don't account for the

[1:58:56 PM]

complexity of business models. And those are the questions that I'm trying to get answers to. Those are the questions that I'm vetting with stakeholders that I've asked for people who support and people who don't support this ordinance, I'm asking the same questions. I am not prepared to ask those questions today because I'm not asking my colleagues to have those answers. And I will do my best to bring what answers I have and possible amendments I have on Tuesday as I would for any ordinance or resolution or any action that this council takes, and then I still retain the right to do that on Thursday Thursday. >>

Mayor Adler: For what it's worth, I agree with you that there's nothing about this meeting here today that in any way limits anyone's ability to bring any amendments or to meet with anyone. So this meeting happens without any implied or actual limitation. >> Casar: Mayor, if I could lay out one more amendment that folks had brought up. And I did not want my opening statement to be construed that anybody is limited in that way. I just thought that given we had a late loaded agenda for last Thursday, we did have some time at work session, which is good, but just to provide extra opportunity for people if they wanted to participate. So the one other amendment that I want to daylight now so that people have it is also a clarification. Some in the community have asked whether or not a business outside of Austin would be impacted by this, a business inside of Austin impacted by this, how would that work? My intent from the very beginning is this applies to people working inside of city limits. It's not based on whether you're headquartered outside of Austin or headquartered inside of Austin.

[2:00:58 PM]

The ordinance is supposed to apply to people who work in our city regardless who they work for. So this adds additional clarifying language to make it clear that an employer shall grant an employee sick time for hours worked for the employer in the city of Austin. So if you work for an employee that's based in Austin, but you work in new York, it isn't accruing sick time. It has to do with the time you work in the city. I think that's been the intent from the beginning, but again as we've gotten emails and taken meetings and addressed concerns, I think that this is helpful clarification so that a layperson reading this ordinance has clarity. >> Mayor Adler: Ms. Houston? >> Houston: Thank you. I have a 2:15 meeting so I will be stepping away in just a minute. But as I was coming down I heard the long list and I received the long list of entities that support the ordinance, the proposed ordinance, but there's also a long list of individuals, small businesses and the chamber and the Austin independent business alliance that don't support this ordinance. And so when is it an opportunity to ask that this be postponed past the 15th so that as these things come up people have an opportunity to understand the amendments that are being presented today. Some of those that will be presented on Thursday and be able to respond to those without taking a vote on Thursday, on the 15th? What is that process? Because some people are giving amendments today, some will give amendments on Thursday, which will deny the public and those people that are opposed to the ordinance an opportunity to vet those with their particular groups.

[2:02:58 PM]

>> Mayor Adler: The procedural question is no different than anything else we do. >> Houston: So I could make a motion on Thursday to postpone to give people time to -- >> Mayor Adler: On this as on anything else that we do. >> Houston: Thank you. >> Mayor Adler: Both amendments and a motion to postpone would be in order on the 15th. Anybody else want to engage in any further questions or discussion? Yes, councilmember alter. >> Alter: I have a question for staff. I don't know if Ms. Hays is here. I think you are. Thank you. You spoke last Tuesday briefly about some of the enforcement challenges, so I'm particularly interested in understanding the practical side of implementation of this

and what that would mean and how that would play out. And I believe the group that is targeted within the ordinance is taking over that is within your jurisdiction. So can you speak a little bit to what is actually feasible and doable, what you see as necessary and any other information you might have that would help me understand the enforcement realities of this, whether it's who needs to be involved, how much it costs, the timeline for when that could be up and running? >> Joya hays, human resources director. In the last period we articulated our focus to focus on this project even internally until around February and we committed to a pilot. Based on the information that's currently in the resolution, we would be moving away from a pilot and just pushing it back until October.

[2:04:58 PM]

So what we will have to do as a department is to evaluate the cost. I do not have existing staff who can pick up this responsibility preparing for enforcement. So our recommendations would be again -- we would have to go back depending on what the final resolution looked like, we would have to go back and do some assessments as to what resources we would need in order to carry out the resolution as you plan it in the final state. That would include marketing and outreach to the community. As you remember with fair chance hiring we hired a contractor to come in to assist with the outreach piece. That would be something that we would have to do and we would have to provide you some level of cost related to that. In the preliminary time I've had to look at it I would have to look at the contracting we did with the bag ordinance where we contracted with someone to assist us with carrying out that information not only to the businesses, but to the community. So there would be some marketing and outreach piece that we would come back with and then I would have to come about back with some level of staffing and resources that would probably be in the form of temporary employees to immediately address your need. I would come back with some cost for that. And depending on the level of enforcement that you're seeking, some transition to full-time staff that would be able to be responsible for that. If this is something that the council chooses to do, my staff would have to do some additional work relative to the cost factors of adding staff and then contracting consultants to help us with the marketing piece. >> Alter: So is it your perspective that we couldn't have that information available to us if we were asked to vote before the 15th? >> I can certainly work very hard with your direction to provide you some analysis of what it would cost for potential enforcement of this as quickly as possible. I've started already and as soon as I have that information I will certainly make it available. Trying very hard to be as

[2:06:59 PM]

consistent as possible. It's a very quick turnaround time to give you some concept of cost that's not too much, but enough to make sure that I could adhere to the ask in the resolution. >> Alter: I heard a nuance of what you would say that you would be contracting for the marketing. We can't contract out for enforcement, so we would have to add an fte, correct? Because I'm assuming we can't contract out to -- >> It's my understanding that the only component that we could contract out was the marketing

and outreach. Enforcement and investigation would have to be house understand our eeo department, which we don't currently have the staff to accommodate at this time. So we would we would have the staffing to comply with the enforcement by October. >> Alter: And when you present that would it be easy for you to have some comparative cost that was used for the bag ban or if it was better build or whatever that would what would be the -- so that we have a sense of the ballpark. This may be more complicated than either of those, but so at least we have a benchmark? >> Sure. I think our fair chance hiring was 15 or more employers, so that's a smaller group and the bag ordinance was also just those retail entities that sold bags. So this particular entity would impact more and we try to make adjustment of predicting what that would be based on those rulings. And we could do our best to provide you that information as you've requested it. >> >> Alter: I don't know if this is a question for you or Mr. Casar. I'm just trying to understand what the ordinance as drafted envisions in terms of enforcement that onramp who would be doing what and

[2:08:59 PM]

whatnot. >> Casar: Mayor, so I would like to lay out for you guys a little bit on benchmark cities. So in Chicago I believe they have two ftes dedicated to enforcement. In St. Paul they have one fte that was a reassigned staff person. And let me see what else? In Seattle they brought on one fte to start, and in DC they had two to three. I believe that it is ultimately up to us on how robust we want to be and very well we might want to work with Ms. Hays because we might choose to do more than that. But that is just some comparatives and ultimately those would have to be budget decisions because we would have to grant the city manager new ftes if there's not ftes that could be reassigned. Also Dr. Washington, I don't know if you -- I think you and I were the last folks that discussed the budget question around potential funds for the education and marketing piece? Is it right that we have -- if we start addressing this October first internally [indiscernible] And externally as part of the ordinance, that we have somewhere in the 200 and 250,000-dollar range of funds that may be able to be used for this? >> Yes, mark Washington, assistant city manager. Our budget officer, Ed van eenoo did confirm that funding is still available to be purchased by the council differently if the council chose. >> Casar: So ultimately there's some flexibility that we have now with budget dollars and then ultimately it would be up to us in our budget if we want to do expansive or extensive enforcement. But with fair chance hiring we passed our ordinance. That is the rules on the books. Hr developed rules, did education and then in our

[2:11:00 PM]

budget we decided how many staff we wanted to enforce it because it's ultimately up to us to pass a budget and decide how robust we want the enforcement arm to be. I would advocate for the enforcement arm to be a little more robust than what I laid out, but I did want to lay them out. >> Alter: I had a couple of comments. >> Kitchen: Could I add something? >> Mayor Adler: Let's let Alison finish her thought if she wants to. >> Alter: Part of what I'm trying to understand is not just how much enforcement costs and who is doing it, but the type of enforcement. So are we talking about a situation

where this is enforced when somebody makes a complaint? Are we talking about the city going in to people's businesses and policing whether they've done this? I'm not sure from the ordinance that I understand, you know, this enforcement mechanism. And philosophically it may be all for paid sick leave, but on the ground what would happen and is it practical, and what are the impacts? And that's what I'm still trying to understand with the ordinance that is before us. So I need greater clarity on that in various ways and this is one way that I wanted to highlight, which I highlighted last Tuesday so that we understand the nature of this rule were we to move forward. >> Casar: So I would certainly -- the law department may be able to give you more clarity in a conversation of how exactly they interpret the ordinance, but I'm happy to give you what you and our co-sponsors worked on and what the intent is. And that is that this would be a complaint-driven process and which if you are not given your earned sick

[2:13:01 PM]

days after -- once a business is able to be fined, that you could call in to the equal employment opportunity office and file a complaint and we would list here in the ordinance that the eeo fair housing office should receive and investigate complaints, alleged violations of this chapter. So we do not list in here that the eeo fair housing office shall do something other than receive and investigate those complaints as they are received. The eeo fair housing office would find out whether or not there's a violation and if there is one would seek voluntary compliance and only if there was no voluntary compliance and they had found a violation would there be the option for a fine. The one last thing that is in here is that a complaint alleging a violation must be filed with the eeo fair housing office within two years of the date of the violation so some other cities give three or four year windows. This has a two-year window for someone filing a complaint. And if that didn't answer all of your questions -- >> Alter: I have a lot of questions, but that answered that one, thank you. >> Mayor Adler: Ms. Kitchen. >> Kitchen: I just wanted to comment on something Ms. Hays said that we've been calling this various things, marketing, outreach, education. I want to be clear that a component of this -- and my understanding is from Ms. Hays that this could be contracted out or perhaps would be more appropriate in our small business department. I think to me outreach or education or marketing or whatever term we want to use includes a component to actually provide consulting assistance to small businesses. On what a program like this

[2:15:01 PM]

might look like and what might be of use to them in terms of how they handle their books and records and those kinds of things. In my view education is not here's a piece of paper that says whatever requirement we pass. That is not going to be helpful to small businesses or any business for that matter. I'm thinking more in terms of clarity on what the requirements are and are not as well as some assistance in terms of moving forward. I think that most of our businesses or actually all of our businesses are very interested in treating their employees in a way that helps them when they're ill. And

because it's good for business and it's good for their fellow employees. And I think we need to recognize the good faith that businesses would be approaching any kind of requirement with and offer assistance and not just marketing or outreach. And so I think we just need to clarify what we mean by that term, that's all. >> Thank you, Joya Hays, human resources director. As we talk about outreach and education, one of the key components about that is making sure what we learned in terms of lessons learned in fair chance hire, what we learned from Seattle and D archbishop DC when we were rolling that out was that there was a robust, organized group who were able to articulate and educate stakeholders what their rights were as a result to it. But they weren't as proactive in educating companies and businesses. So our education component allows us the opportunity to ensure we create multiple avenues by which businesses can better understand the ordinance. That includes actually connecting with businesses who proactively ask us those questions, creating work sessions, creating online opportunities, answering questions, developing websites, and everything that you discuss, councilmember kitchen, as a part of the education outreach piece so it's not just a median marketing, it's the connectivity to

[2:17:02 PM]

community to better understand it. And I think much of what you discussed in your current description is what you will see in the same level of work done with the bag ordinance that the outreach was done to make those connectivities. We've already reached out to economic development as this began and the challenge that we have on the city's side is the lack of resources to be able to do that with recurring infrastructure. So we will be back and be able to address those pieces within a contract, but that doesn't mean that with that contract we will not continue that work as we hire investigators. On our fair chance hiring side right now our current investigators not only are responsible for investigating, but with that system there is a warning component to it and that allows us to provide much more information to those entities. And we also partner with other organizations, Sherman, other organizations who work with human resources to help them better understand it so that we can manage that through the professionals that work within those organizations. >> Kitchen: That's very helpful and thank you. I would also like to hear from the small business department that is in economic development. As you explore what would be required to put something like this in place to respond to councilmember Alter, I would like to hear from our small business department what they think they could do to add assistance for small businesses. Because I see this as part of a consulting opportunity for small businesses. >> Okay. >> Mayor Adler: Okay. Councilmember pool? >> I got a nice note from the CEO of Purple Fig cleaning company where she said she has a sick leave policy in place. And I wanted to ask the different small businesses that have paid sick days and policies if they might

[2:19:02 PM]

provide copies of those to us I think it would be really interesting to see what they have in them. With some of the work you did on this based on what some of the small employers, councilmember Casar, what some of the small employers in Austin are already doing. >> So yes. We -- I've had meetings with a

really broad variety of business owners as have I know the co-sponsors of the ordinances and their office or offices where many of these meetings with a lot of the small businesses that are supportive of the ordinance that you see before us and also those that are not for it. So we've really tried to make sure that this ordinance was something that not just advocates supported, but many of the local businesses that provide paid sick days could support and would change their practices. And honestly, there are some businesses that don't currently provide sick days that are on the support list because it's easier to provide sick days if there's a level playing field and you know that the folks up the steed have to provide paid sick days just like you do. So the purple fig, for example, councilmember pool, was one business that we had multiple meetings with that helped us look at their paid sick days policy and I think I'd be happy to reach out to some of those small businesses and have them share their policies with us.

>> Pool: And I notice that councilmember Houston is having to leave and I'm going to have to leave to. Let me run through a couple of the other things that I wanted. I would ask the small employers if they would when they have the public hearing this they would bring copies of their sick leave policy with them so he could we could have them. I know the Austin small business alliance did a survey of membership to find out what they're affected -- their affected clients, how they felt about this and the impacts that they would have. And the big thing that rose to the top of that list and I was looking for it in here, was exempting out small employers like we have done in other policy.

[2:21:03 PM]

I think like the fair chance hiring somebody mentioned recently, which reminded me of this, that we did exempt out small employers that had fewer than 10 or something. That is not in here at all and I think our local small businesses, as a group, probably are more lightningly going to be affected by this in more ways than they can otherwise accommodate. So I want to find out about exempting small employers. Maybe I can also get some information from miss mallsom. And maybe we can get information there. I see information from Chicago. Councilmember Casar mentioned Chicago and their sick leave ordinance, but I note that employers can restrict new employees' use of paid sick leave until they finish six months of employment, which I think is also a standard, if I'm remembering my time in other governmental entities. You may start earning your sick leave, but I think you can't -- or maybe it's vacation. Anyway, there's a timeout period that you have to have six months or -- there's a word for it. When you aren't quite a fully -- you're not fully an employee until after six months of employment. So employers can restrict a new employee's paid sick leave until they finish six months of employment in Chicago, and they also don't apply it to the construction industry working under a collective bargaining agreement, which makes sense to me because the collective bargaining agreement would guide in that -- would direct in that instance and so I wonder with our construction folks and our union folks if this collective bargaining agreement piece, if they already have these benefits. And then I note in Minneapolis that companies with six or more employees must provide paid sick leave

[2:23:04 PM]

but if they're smaller than that they can provide unpaid timeoff. So this goes back to exempting employers of small numbers of employees. And then the last thing that I'd say is because philosophically I'm very supportive of this kind of legislation. This feels like something that should apply more than just in Austin. And this really feels like something that should be a statewide benefit. And I know we're in Texas so that's a really hard -- that's a high mountain to climb, but it feels like that's really what we should be doing here is directing a statewide policy because I then ask what strategy do we have if we adopt a sick leave policy to have it -- to have it shared statewide so it's not just in Austin. If this is really good, and I think it's a really good policy, but it has to be more than just here. And then more to the point, what are we doing to protect our city from the state legislature who may very well decide to target us, and the next legislative session, which is in 2019, this year, and pre-filing is later this year, what protections will we have if we pass this and then all of a sudden the state preempts us and it's taken away? So we will have had this debate and this fight and we may have put something into place and it will last all of maybe a year. So I just lay that out there

[2:25:05 PM]

as some serious deep-seated concerns that I have about this issue starting from the place of my follow so far kel report which you would know that this is something that I would absolutely support. My concern is that we do is right, we benefit everybody including our small businesses and we endeavor to hear them and incorporate their concerns. And what are we doing to advocate for this statewide more broadly? And in the alternative, how do we protect those small businesses and those employees that may not have had the sick leave and we grant it to them and they get it and then the legislature comes in and preempt actively removes -- preempt tifully removes it, which there's every expectation that that would happen. So what are we doing for that? >> Casar: Councilmember pool, I know you have to go so I want to see if I can quickly run through some of those point. I will touch back with some of the unions on the collective bargaining issue you have raised. As far as the small employers question, in many conversations with many of those small employers that currently provide sick time, many of them were very supportive of still having this apply for employees all over the city because if you're a bigger business there are more employees that get sick time and if you're smaller it would be lesser. I recognize that some cities have fewer requirements for small businesses, but many cities also have stronger requirements than what we have included here. So that's just a balance and a negotiation, but I appreciate you bringing up that point as we try to figure out what the right policy is.

[2:27:06 PM]

On the statewide issue, a bill has been filed many times that's largely died on party lines, but I think it's important for us to raise in Austin because we have hundreds of thoses of people that would benefit and I don't want to be held back from doing it because I think it might get taken away. I want to do the right thing and then we will have a discussion at the legislature if it comes up. I would note that this is a very popular policy across political lines. In Arizona to my dismay the majority of voters supported

Donald Trump, but in Arizona on that same ballot voters actually supported a statewide paid sick day policies because they could put policies on the ballot there, by more than they supported their presidential candidate. And it passed by about 20 points. So I think it's a very popular issue across political lines, but want to make this decision because it's right for Austin workers, potentially inspire others to do the same and then deal with the legislature as it comes. And if we pass this soon, then as you said, at least a year most bills go into effect in September of the following year, for at least a year we could have showed our community that we care about this issue, that we recognize that we don't want to wait until the next flu epidemic to provide this basic public health, safety and health protection, and show that at the local level government is still trying to close the inequality gap. So that's the way that I've thought about it, but I'm happy to continue the conversation at upcoming sessions. And thank you for raising those so that we can see if there are amendments that could if not fully address, partially -- potentially partially address some of those issues. There are members -- while I recognize that the Austin independent business alliance survey showed that the majority of those members did not support this ordinance, their survey did show that the majority of their members are providing some amount of paid time off

[2:29:07 PM]

or sick time. So we would just be asking for those that don't to change practices. And there are members of that organization that are on the support letter. >> Mayor Adler: Mayor pro tem? >> Tovo: Yeah. I appreciate all the work that our sponsor has done. I'm happy to be a co-sponsor on this item and I agree that it would be great to have a statewide policy, but frankly, my hope is that in taking action that Austin will be a leader in this as in so many other areas. And we confront this challenge a lot here in the city of Austin, but if we didn't take this -- we confront this challenge in Austin of having the legislature up the street and wondering what they're going to do the next time they come back in session with our laws, but if we waited, frankly there would be a lot of good work we wouldn't do if we worried about how the legislature would respond. So this is in my opinion a really good example of when we need to take action and we need to not worry about what the state is -- how the state might respond. And perhaps it will be a model for other municipalities throughout the state and the state will be encouraged to take a statewide action.. I have a couple of questions, like so many of you, I have also been hearing from different businesses in my district. And I believe that I can answer most of the questions that I have received. But there is one that continues to come up that I want to raise here today. And that is -- the question of salaried employees who have unlimited sick leave as part of their salaried employment. And would they be required to change to an accrual plan. And so -- so councilmember, if you have thoughts on that? I would be happy to talk it through. >> I would be happy to show folks, but the ordinance clearly states that if someone has a more generous policy than what is required

[2:31:08 PM]

here, they provide a day sooner or they provide more days, that would be counted as in compliance. So infinity days is more generous than the number of days applied here and so if there's any clarifying language that folks would like, added to the ordinance, again I think that would be helpful. But we recently had conversations with some firms actually in my own district that provide that or want to provide that and we showed them the language. And I think it helped them. So there is a pretty clear provision in here if you would like for me to read it that states -- >> Tovo: I'm familiar with that provision. I think here's where it gets a little tricky. This as described by this particular business, they have described it as unlimited sick leave. Yet there is a conversation if an employee is going to be out for more than a week, about how to do -- and that decision is not automatic. So there is -- I think this may be the situation for other businesses as well, that it's more of a negotiation between employer and employee about how to handle those kinds of longer absences and so -- so it does -- it might -- it certainly would be potentially a question that would come up for that particular business in the case of an employee who needed to be out for a longer period of time. >> Casar: So that would be addressed by 419.2 in -- in E. So, yes, what this would address would be that if someone is indeed -- has a health or safety issue themselves or of a family member, that this -- this would change someone's practices to make sure that they are allowed to take up to eight days, if they have earned it or if they have been given it to them by their employer, if -- if they are indeed a health or safety issue or if they -- if the employer wants

[2:33:09 PM]

verification that there's a health or safety issue, like a doctor's note or what have you, that the employer would be required to respect that. But would be allowed to ask for it after three days. But, again, I think the philosophy here is if somebody is really going above and beyond already on their sick-time policies or pto policies that we want to respect that. So if there's additional clarifying language that those businesses request, I think that's something that we should strongly consider including. The goal is really to get people the paid sick time that aren't getting it or are getting very little of it. >> Tovo: I agree. It may be that this particular business might decide to have a more [indiscernible] Policy to make sure they are in compliance with the ordinance. But that would be up to their discretion. >> Casar: And the foreseeable absences, what I think you described, somebody up front saying hey I'm going to take a week off. This doesn't regulate those. If the business says hey I need to work with you a couple of months in advance before you take a 10-day vacation. This doesn't regulate vacation or those sorts of absences. It only applies to those health or safety absences. >> Mayor Adler: Councilmember alter? >> Alter: So I had an opportunity to talk with several workers who have talked in very compelling ways about the need for paid sick leave. We all just went through the month of January where half of Austin was sick and there's clearly public health benefits. But I've also had an opportunity to talk with small business owners and I'm trying to understand the other side of that. And how we make this work from a practical standpoint. So like councilmember pool I

[2:35:10 PM]

am trying to understand if we need to set a bar where it -- where certain number of employees is exempt and what that bar would be. I'm not yet at a point that I'm offering a specific amendment. I'm still trying to understand some of the choices that businesses have to make when confronted with this kind of -- of benefit requirement. So that would be that exemption question. Another piece that has come to my attention is by -- you can accrue it right away, but then the question is when you use it and there are different kinds of complexities that the businesses face with different employees, and we may want to look at getting to use it after a certain period, whether it's 90 days or six months. For different things. I also do worry about, since I don't fully understand yet, what kind of burden this is imposing just strictly in reporting and other kinds of things on the businesses, I'm a little bit concerned about doing that and then having it pre-empted and then you have to do this kind of whiplash thing, that makes me uncomfortable. And I don't have a solution. I'm trying to keep in my head that paid sick leave is good for the workers, good for public health. But there is this other portion that really does have to be factored into any productive policy. And I'm trying to get work -- work through those details, I don't know if those are amendments or I will have it resolved in some way. I did want to share where my thinking was because exempted and at what level, when this starts, how that interacts with those business complexities, also do we have enforcement mechanisms and budgets that you know make this a policy worth having. Those are the things that I'm trying to get over that are not about questioning

[2:37:11 PM]

the value of -- of sick leave but are about trying to make the policy. >> Mayor Adler: Mayor pro tem? >> Tovo: I'm sorry, I'm just looking over the question. I hate to take us back to the question I raised before. But I think that I would like to ask our human resources department how -- how the question -- so the question I asked was about the business that doesn't to take a sick leave -- to take sick leave as they need it. And if they need to be out for more than a week to discuss with them and come to an arrangement. About the ordinance does specifically require there to be an accounting month by month. So it would seem to me that the answer to the question about whether they need to set up, whether they need to transform their plan to an accrual plan would be yes, actually. While it may end up being a more generous plan than -- a more generous allocation of sick leave than what is being required by the ordinance. There are specific reporting requirements that I believe would make it challenging for them to be in compliance accrual plan. Is that your sense of it, director hays? >> I would have to research that. I don't know the complexities of the private sector and how they manage their payroll. I would have to do additional research to determine whether or not they would have to make those types of adjustments in order to comply with the resolution as written. >> Tovo: The ordinance does require them to -- to keep track of how much sick leave each employee is accruing and so -- if it were kind of more flexible, you would come to me and tell me if you're sick, then it wouldn't be meeting the reporting requirements. The accrual recording requirements of the ordinance. >> It would not. >> Tovo: Okay. All right, thank you. >> Mayor Adler: [Indiscernible] Maybe -- I don't know who the -- the -- ordinance as I read it says that you have to provide notice to your employees

[2:39:12 PM]

that you complied. But no one has to provide that notice until the city says these are the kind of notices that you could put out that would comply. It would seem to me if I worked in a company and the company's notice said, you are entitled to take -- if you are sick, we want you to stay home, we don't want you to come. So we don't limit the number of sick days. So take your sick days as you need them. It would certainly seem to me that that would be in compliance, because you're not limiting someone -- so long as they have the ability to take 64 hours, at any given point in time -- in other words, you would, in essence, as I understand your question, you would in essence be saying you have 64 hours that have accrued under our policy. >> Tovo: The question is: Is a company that allows for that amount still required to do the month-to-month reporting? Recording, I should say. Recording of how many -- how many specific hours he or she has earned. >> Mayor Adler: That -- I would read this, my opinion would say no. So long as they were reporting that you have eight hours. As long as you have the 64 hours. Because the accrual was only to be able to demonstrate how many hours, if any, up to 64. So if you are saying that you have 64, then I don't know what else you would be required to do. >> What I am hearing is if a company or organization, again we would have to look into it -- if a company or organization already had a policy that provided more than eight days, then they would be in compliance with this without having to track it because they are already by nature providing you in that period more than what the resolution is requiring. However, if there are companies who do not provide up to eight hours, eight days, 64 hours, then they would be in a position to have to identify how they

[2:41:12 PM]

were managing those 64 hours to ensure that the company was meeting the bare minimum of what the resolution is expecting. I think both perspectives need additional research. But what I hear the mayor's piece is a little different from the perspective of if I'm already offering you 15 hours a year without having to write it down, without having to manage that in an accrual system, then I could meet the heart of this resolution without changing my current system. However, I'm only offering you seven, then I have to create a system by which I'm at least managing up to the 64 hours. >> [Indiscernible]. >> Tovo: Director says, as I understand it, you're going to research that a bit more and provide us with -- >> To the best of my abilities, I will research the private sector tendencies to see what types of accrual changes would need to be made in systems that were required to do that, yes, ma'am. >> Tovo: I appreciate that. >> Casar: Let me clarify the intent of what I understand. Maybe actually -- I don't know if law could answer this. But my understanding is the more generous policies portion is trying to say you would be in compliance. As far as recording, though, if we want to be really clear, I think it would be fine to include something that says if you provide unlimited time off, you don't have to record how many days somebody has used or spent if you are providing unlimited time off because it's just unlimited. But I'm happy to -- to see -- I don't know if a -- if the law department -- >> Mayor Adler: I think the city attorney has pushed her button. >> I was going to say I think that we can write it that way if that's what the council desires. >> She took the words right out of my mouth. >> [Laughter]. >> Okay. >> Mayor Adler: Mr. Flannigan? >> Flannigan: Something else, mayor pro tem that you asked Ms. Hays that I think

got skipped over. If you have an unlimited or generous sick leave policy but the usage of that over a certain number of days is a negotiation, the city becomes the arbiter of that negotiation under this ordinance, because if the

[2:43:16 PM]

employee doesn't agree with how the employer negotiated that, they would then file a complaint with the city and the city would become the arbiter of that negotiation. So that's -- I don't think it's something that you can necessarily gloss over. >> Tovo: I guess I don't see it that way because there's still a standard that we're holding businesses to and they either meet that standard or not. >> Right. If it's eight days -- >> Flannigan: It's not eight days. It's 64 hours. It's a very important distinction because if you are a full-time employee at 30 hours a week, it's more than eight days. >> Tovo: Good clarification. >> Flannigan: Yeah. >> Flannigan: So I'm just daylighting that because it was something that I heard a threat from. >> Mayor Adler: Anything else, Mr. Casar. >> Casar: I appreciate that, I think we can bring those up at the next work session to see if they can be addressed. For me the idea of you earning sick time but not being able to take it for so many months is just really difficult because if you have worked the time, then you -- I think that you -- you can't choose when you or your child is going to get sick, even if it's at month two of your job. If your employer is already letting you accrue the time, I don't see why not to let people take it once they have earned it. But I think that's part of the conversation. Right now we have two weeks as the time period that you have to work before you can take any time, but I think that extending that period a lot is difficult. And at the same time a lot of vulnerable people work in businesses of all types, large and small. So while, you know, there are lots of small businesses that have expressed concerns, there are small businesses that have expressed support. I just want to make sure that my intent with the ordinance and I think what we're hearing a lot from the community is that we want every working person in the city to have access to sick

[2:45:16 PM]

time. And so that's going to be my continued goal is to make sure that everyone can access this. I'm open to hearing about -- about how it is that we can support our small businesses also through this process, but I don't want to leave out tens of thousands or hundreds of thousands of people who need it just as badly, whether they work for somebody that has 19 employees or nine or 99 employees, people really need the sick time. So that's the -- that's the underlying goal for me. >> Mayor Adler: Sounds good. It's 2:44. This work session is adjourned. [Adjourned].