

Audit and Finance Committee Meeting Transcript – 8/14/2018

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Committee members, have you had an opportunity to look over the minutes? And if so, is there a motion to approve? So moved by the mayor. Councilmember alter seconds that. Any other discussion? Okay. All those in favor? And that passes unanimously. Is there anybody signed up for citizens communications? >> [Inaudible]. >> Tovo: Great. Thank you. So that brings us on to number 3, and that's the audit of traffic enforcement. Thank you. >> All right. We conducted this traffic enforcement audit, the manager of the audit was Andrew Keegan. Cameron was the auditor in charge and he will be presenting this morning. >> Good morning, mayor and councilmembers. As corrie said my name is Cameron la grown and I will be presenting the results of our traffic enforcement. Let me make sure this works. In 2016 the city of Austin adopted a vision zero plan with a the goal of zero deaths and injuries on Austin roadways by 2025. The plan involves actions by multiple departments under five key themes. This audit focused on enforcement efforts. And we'll be starting an audit soon to look at the other elements of vision zero. The Austin police department is responsible for enforcement of traffic laws on all city roadways. Municipal court resolves traffic citations and red light camera violations. Municipal court also collects fines and fees from traffic citations and general fund revenue. And reports that traffic support and safety are a top priority for the department. However, they have competing shifts when they are responding to calls, maintaining traffic flow and oyster baking traffic laws.

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70 percent of the time was spent responding to calls for service. This means that 21% was left to finish reports, direct patrol in an unknown hot spots, engaging in residents and businesses and traffic enforcement. APD reports this time as percent of community engagement time available, the time spent on community policing efforts and engagement with the community. To supplement traffic enforcement, APD uses the selective traffic enforcement grant, administered by the Texas department of transportation, to pay officers for overtime hours to do argued enforcement. This one-million-

dollar grant funds enforcement efforts that are focused on speeding, distracted driving, occupant protection, traffic control and impeded driving. This is a large portion of all citations written by APD officers. In addition to grant money, APD relies on red light as to promote safety. There are currently 10 red light cameras throughout the city. Red light cameras appear to be successful at reducing the number of crashes in intersections. In the year prior to activation, the nine intersections had 145 crashes and the intersections average less than 50 crashes per year in 2014 to 2016. Due to the reduction in crashes at certain intersections, we recommended that municipal court work with stakeholders to evaluate whether any current cameras could be moved or new cameras added. Municipal court operations are partially funded with revenue from citations, but this can be an inconsistent source of funding. Staff with both APD and municipal court stress that the purpose of traffic enforcement is to promote safety on city streets, not to generate revenue for the city. This focus results in actions that may reduce the amount of revenue that could be collected each year, but may lead to safer streets. For example, APD policy advises officers to issue a citation for defective

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headlights or taillights, only if there's evidence of willful neglect or if the driver has multiple warnings. Although a warning would not result in revenue for the city, it may result in the driver fixing their lights, resulting in safer roads. Additionally drivers have several options other than payment to address a citation. Many of these options promote a safer mobility environment such as taking a driver's safety course, fixing broken lights or purchasing a hands free device. As mentioned previously, we issued a recommendation to municipal court regarding the red light camera program. Management agreed with this recommendation and has already started work. That concludes our presentation. And we're happy to take any questions. >> Troxclair: Thank you. Members, any questions? Councilmember alter? >> Alter: Thank you. I appreciate the work that went into this audit and fully understand that we are not trying to do traffic enforcement to get revenue. I do, though, repeatedly hear concerns from my constituents that the traffic enforcement is not taking place and I want to make sure that we have a full picture of what's going on in that regard. And in my mind the municipal revenue was one sign that that maybe wasn't happening. So as I understand it, what we found is that we know that the revenue has gone down over time to the municipal court from the traffic enforcement. What we don't know is whether that is coming from a reduction in the amount of traffic enforcement taking place or a shift to warnings over citations. Is that correct? >> Yeah, that's correct. >> Alter: In this report you do not present any information about citations versus warnings. And it seems that it would be useful to have that information. So do you have information that you can share about that?

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>> For this particular report we didn't try to quantify the difference between citations, warnings, the deferrals at municipal court, all of those different factors. We could -- I think APD may be better able to answer that question or provide that data to you? >> Are you able to speak to that? >> Good morning,

mayor and council, chief Newsome from APD. I should have brought a copy of this to you guys. I failed to before I left the office. It's a two year comparison at least. In 2016 the total number of warnings plus citations written was 127,103. Of those 24,910 were warnings and 102,193 were citations. In 2017 the total number written combined was 127,257, with 31,615 of those being warnings and 95,642 being citations. So the number of stops and combination of tickets and warnings is pretty consistent with the number of citations is 5,000 or so, 7,000 or so fewer in 2017. And there was no policy change to result in that, it's just the way it worked out. And one could surmise that potentially the lack of vehicles due to the co crisis led to less cars making stops, but then you see the total number of warnings and citations is about the same. I checked this morning and on the step program that Cameron mentioned, after December and the lack of a contract, which changed how

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we handle vacation and what's productive time and what isn't, there's been a reduction of about 300 hours per month on average of officers working step. And so that could potentially lead to why there's been a reduction in the number of tickets. In 2018, it doesn't count for these numbers. >> Alter: Do you have those numbers for '15 where we were at 6.6 million in revenue? >> I don't have '15. I didn't have a chance between yesterday and today to pull that up. So I apologize for that. I could get that report back. >> Alter: Yeah. Because I know that there are the -- they are theories with the carbon monoxide stuff in there and it would be useful to see that going back to '15. And do we have any breakdown of the types of citations and warnings and how that-- >> I do not have that break down either. Again, I can get that. From the -- from yesterday when I got the -- what the questions may be today, I didn't have time to get that. >> Alter: Because we repeatedly are hearing that, you know, the traffic enforcement is not taking place and that is resulting in speed bumps that nobody likes, and, you know, people are feeling unsafe in their communities to walk on the streets in places that you think would be very safe. And I'm just concerned that we can increase community policing, which we need to increase, and I applaud that direction, but I have no way of telling from this data whether traffic enforcement has gone up or not with that data because you don't track it. >> Okay. We can work on getting those categories broken out. >> Alter: Yeah. I think that would be great just so that -- you may be doing it, but I can't report back to my community and say we're doing the same amount if I don't have some data to support that because right now they literally never see a cop in their neighborhoods

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doing anything and they're having to hire constables, which is problematic on multiple levels. It's problematic they have to do it and problematic that other communities can't do it. And when those constables go out and enforce, enforce maybe 20 hours a month, they're getting lots of citations and they're usually not people who live in the neighborhood, and that money is going to the county. And that overtime money is going to the county officers. Something's not being delivered there in terms of services where there's clearly a demonstrated need if you look at these constable reports. I mean, if you

can do it like two hours and get that many citations, then there's a speeding issue or there's a -- we even had a drug bust that happened because of the constables. It's something's not happening there. I definitely would like a follow-up to this audit with some of that data so that we can drill down. And if you can find a way to track some of that traffic enforcement for the step so it looks like most of the enforcement is being done, a good majority of it is being done by that step program, how long do we have that grant for? >> It's been ongoing for over 20 years. It's renewed annually. >> Okay. And is that, you know, one of the issues we have is that we want to have more officers because for some parts of the community they want to have more traffic enforcement. Is it an alternative then to put more money in the way that step is having more money? >> The citizen is primarily gathered toward high speed roadways, which is also an issue. It's not really geared toward neighborhood traffic control. And then when we decide where, we ask our highway enforcement officers and motor officers to work, it's usually tied to crash data,

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which doesn't mean that we obviously -- it doesn't mean that there's not a need in the neighborhoods, but there's a greater need where the deaths are happening and that's where we direct our efforts at. >> Alter: Okay. And then I wanted to ask that -- I'm not sure if it would be the municipal court or atd that would need to report back that you can report back to us on the cameras being moved for the red light cameras. When those are done. >> I think that would be municipal court is coordinating that effort, but it does involve all three, maybe more than three departments. >> Mary Jane Grubb with municipal court. We are currently working with APD and atd. The current contract is for 15 cameras. There's only been 10 for a number of years, so we're first looking to identify a possible locations for five additional cameras that are included in the contract and then we're also analyzing the crash data and the red light camera data for each intersection that -- that are still effective. And if not, maybe relocating those. So we've been meeting since July and we'll probably be meeting through the end of this year. So I think this process will likely take 12 to 18 months because we also have to work with the -- with txdot. >> Alter: Sure. And I understand that the state has? Serious requirements before you can put in a red light camera. I just wanted to ask if you can come back to audit and finance to report that those are moved, whether you tell us exactly which intersections they were moved from, that will lead to the discretion of APD and atd about what's best there, but I would like a follow-up at the appropriate time so that we can know that that change has happened. >> Okay. >> Alter: Thank you. >> Troxclair: Mayor pro tem tovo. >> Tovo: I have a question about the red light camera

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discussion that's going on. It was suggested to me recently -- in my district I'm hearing a lot of concerns about people racing through the pedestrian beacons. And in fact, you know, one of them that I'm aware of that I received a concern about a few weeks ago has had several crashes there recently. Has there been any discussion about putting cameras at some of the pedestrian beacons where you're seeing lots

of cars going through? >> We haven't had that discussion. You know, it would be something totally new. I don't know of any jurisdiction that does red light cameras at pedestrian beacons. >> >> Tovo: It's more like the bus -- you know, the suggestion came from somebody who was aware of the bus cameras, which we did at city council to allow aid to take photos of individuals who were speeding past the buses. >> That's an interesting concept. I don't know that it's ever been discussed before. >> I have not been involved in any conversations of that nature. >> Tovo: Okay, thank you. >> Troxclair: Mcraven. Thanks for joining us. >> Happy to be here this morning. This is also a very important topic for my district. And I know I have folks that also report not seeing cops in their neighborhoods, even though I've spoken to their Dr and they've done directed patrol. And there's a difference between patrol and traffic enforcement. So some of my folks who are frustrated with one aren't driving on the roads where the traffic enforcement is occurring, so we want to be careful not to just take the anecdotal data at face value. I am curious about what type of traffic enforcement we see from other jurisdictions, and my district has a lot of weird etj lines running through it and we've seen constables and Williamson county sheriff doing some directed traffic enforcement. There was some in Anderson mill neighborhood after a kid got hit walking along the street. I'm curious what that type

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of effort -- how that type of effort might be explored given that our city taxpayers are also county taxpayers. >> Right. I guess we could have a discussion with county traffic enforcement and their motors and have a coordinated effort in those areas where there is some overlap and team up and see what we can do in those specific locations. >> Flannigan: That's something I would like for the council to contemplate at some point because we're paying for two agencies, but only paying for one most of the time inside the city limits. And three agencies if you count constables as separate from the sheriff. And txdot. So txdot does enforcement -- the -- what is that agency doing it on the state highways. It's not you guys? >> Dps does it on state highways. >> Flannigan: Dps. Is there information about what traffic enforcement is occurring on the state roads? >> Generally within the city limits dps doesn't do as much traffic enforcement as they do outside the city limits just due to the fact that that's -- that's our area and we do it. And so -- but on the state roads they're surely capable of doing it. They just focus their efforts where it's not being done because there is no menu police department doing it. >> Flannigan: Sure. And that's another one of those things in my district as we had a lot of issues on 620 out near steiner ranch where it's another complicated set of jurisdictions and we had sheriff and dps help us out. And it worked great and it spurred this idea that maybe there's some ways to maximize this relationship. >> I'll ask my commander to explore that with the county and with dps. >> Troxclair: Any other questions? Is there a motion to accept the audit? So moved. And seconded by mayor pro tem tovo. All those in favor of accepting the audit? It's accepted unanimously. With councilmember pool off the dais. Okay, thank you so much for your work.

[9:53:54 AM]

The next item on our agenda is proposed changes to board and commission bylaws, a presentation by the city clerk's office. >> Good morning. Mryna Vias, city clerk's office. Today we are discussing the proposed bylaw changes to the community development commission, but before we get started we distributed revised -- a revised version. The CDC took up their bylaws last night. They reviewed and approved with a minor amendment, and that is to include the words "Or council committees" to articles 3-a, 3-a 2 and 3-c. With that we'll get started. The first proposed amendment is to article 3-a-1 and that is eight members shall be democratically selected by organizations representing residents from each of the eight geographic areas of Travis county to represent low income populations eligible to be served under the community services block grant in each area. So the deletion of health and human services department neighborhood center or a parks and recreation department recreation center was directed by the tdhca to ensure representation of all residents in Travis county. Are there any questions regarding the first amendment? >> Troxclair: Yes, councilmember Flannigan. >> Flannigan: So since we're right here on the very first one, is there -- is the CDC only dealing with Travis county?

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>> Good morning, mayor and council. My name is Maria Allen, I'm the manager of the neighborhood services unit and I work with the community services block grant. So one of the things that's unique about the community development commission and about the community services block grant is we're required to have a tripartied board to serve as the advisory board for the community services block grant. And the service area for the community services block grant is Travis county. I'm not aware that there are other counties that the CDC also works with. >> Flannigan: So there's no community development block grants happening in Williamson county? >> There may be, but I do not believe that this particular commission works with the community development block grants -- >> Flannigan: But if there is a block grant there has to be a commission to oversee it? >> So if there is a community services block grant, which is a little bit different, there ask does have to be a required advisory board that's made up of these three parts, a public sector, a private sector and a low income sector. >> Flannigan: So my office is going to look into see if Williamson county is participating in such a scheme on the northern side of the city. We found that when Williamson county has done similar work to Travis county they conspicuously leave out the city of Austin in their leadership roles, so my folks, specifically me where I live in Williamson county, gets left out of those conversations, which is only a little bit frustrating. Can you help me understand what democratically selected by organizations means? I'm not familiar with this as a phrase? >> Yes, sir. So there is a resolution that spells out the designated geographic areas, there are eight of them in Travis county currently. And I'd be happy to go through that list with you if you would like. But the organizations that help facilitate those nomination election at meetings, basically are there to help make sure that

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we have representation from those low income areas, so we typically work with advisory boards in the areas, neighborhood associations, non-profit organizations, and they actually are the ones that facilitate the nomination election process. For that democratically selected member to represent that particular low income area. >> Flannigan: So the organizations facilitate the voting process. >> That is correct. >> Flannigan: And who is eligible to vote in this voting process? >> Only the people that live in the designated geographic area. >> Registered voters who live in the geographic area? >> So generally we -- >> Flannigan: Just trying to understand. >> Generally we don't check voter registration. We do check ids to make sure that people live in the area. >> Flannigan: Just the phrase democratically democratically elected seems very intentional. I've seen examples where you hold a meeting and you take the votes from the people that showed up, but if you have a job that doesn't allow you to go to meetings, you don't have access to that and that's what's different about an election where there's early voting and Saturday voting. And voting rights act rules that govern that. I'm not looking to blow any of this up but it seemed like a very intentional phrase but it still sounds like it's voting at a single meeting. >> That is correct. >> Flannigan: I don't particularly think that's democratically selected but I don't know that this is a dictionary fight. >> Troxclair: And are the areas -- the eight geographic areas, do they cover all of Travis county or do they only cover parts of Travis county that are predominantly low-income? >> So the eight democratically selected representatives do focus on areas that are low-income. Yes, ma'am. That is part of the reason for those designated areas, is to represent the low-income sector of the tripartite board. So just sort of recap there

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are three sectors, a public sector, private sector and a low-income sector. And the eight designated geographic areas have been selected to represent the low-income areas on the community development commission in compliance with the csbg act. >> Troxclair: To follow up on councilmember Flannigan's point, I'm not sure I would be interested to know how many people are actually voting, actually show up and vote for those people. Will you send both of us and the rest of the committee if they're interested the map and any other details that you have -- >> Certainly. >> Troxclair: -- About those elections? Ed it be helpful. >> I'd be happy to. >> Troxclair: Is that process mandated by the state or something set by a city? >> So the process -- the actual requirement is set by the csbg act and then the Texas administrative code, you know, further interprets those rules. They have done -- looked at these bylaws and approved this process for the city of Austin. >> Troxclair: Okay. Would just be curious to have more information. Councilmember Flannigan. >> Flannigan: Yeah. Just to follow on to that, the -- I understand that there are practical realities, you're not necessarily going to run an election-style effort with polling locations and all that, but that's -- this is the type of thing that then gets cited later to say, well, we were democratically selected. And I don't even know that -- that might be a paradox actually, that phrase "Democratically selected" might even be a paradox. Because democratically elected is the thing. I don't know, I'm parsing a little bit, but I'm sensitive to that. >> Troxclair: Can we strike that word "Democratically" and just say eight members shall be selected, the organizations. >> That's something I probably would need to confer with the state about to make sure we'd still be in compliance. >> Flannigan: What she's describing is not the organizations making the selection, it's the organization sets up the

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process for whoever shows up to vote. >> Troxclair: Right. >> Flannigan: I'm a little hesitant to wordsmith. >> Troxclair: Okay. >> Flannigan: I think just daylighting the concerns is enough for me at least. >> Troxclair: Any other questions? >> [Off mic] >> Troxclair: Yes, sir, I think we're moving on. I think we're done with a1, moving on to a2. Okay. >> So 3a2 shall read seven members shall be nominated by council committee or council committees and appointed by the city council it of the seven board members nominated by a council committee or council committees and appointed by the city council, five shall be elected public officials or the representatives and two must be members chosen to represent major groups and interests in the communities served, including but not limited to, business, industry labor, religious, excuse me, law enforcement, or education stakeholders. And this amendment addresses the tchca guidance that more than one public official should be able to nominate representatives of the public and private sectors. >> Troxclair: Thank you. Mayor? Talked about this before with respect to the nominating power. As I went back and looked at the notes from the state, it looked as if the state, when they did their review, was under a misconception as to how we did things here. So they listed certain things that they called deficiencies and then they listed something that they called concerns. And their concern, as they stated it, was that the mayor appoints all representatives for the public sector and the private sector. Clearly, that's never been our practice because the mayor's office doesn't appoint people. We had talked about the better policy being to have it done by a committee, and I know we've had that conversation. I have some concerns about that because members of the

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committee or the council don't represent the whole city, and if we're bringing nominations to the entire council to choose, I think that there's a role for the mayor's office and since he's the only one that's selected city-wide and could bring to bear, and as accountability to the entire city. I have additional concern that the bylaws of the community development commission would be dictating to the city council how it should appoint since the whole council appoints them, how it appoints the people. And I think that's better a decision made by the city council. So it would be my recommendation that we make it clear, as we have here, that the mayor is not appointing people, but that it's only a question of nominating. And I would add to the language "Shall be nominated by the mayor, a council committee or council committees," and then the council could decide exactly how it thought it would be best to nominate those people rather than having us, if we ever wanted to change that from time to time, require us to go back and change the bylaws of the community development commission. So that would be my recommendation. >> Troxclair: Mayor pro tem tovo. >> Tovo: So as I'm remembering our conversation from last time and understanding the rationale that's been presented here, tchca has offered us the guidance that more than one public official should be involved in the process of nominating. They were not speaking to the process of confirming. They were speaking to the process of

nomination. >> That is my understanding. And we have sought, through this process, to clarify that the mayor is not appointing but rather

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nominating the members. But this is the guidance that they have put -- have continued to provide to us. >> Tovo: Organic. So you went back to them and talked with them about it and said the full council would be confirming the mayor's nominations and they still said we want more than one member of the council even if it is the mayor, doing the nominations. >> That is my understanding, yes, ma'am. >> Tovo: Then I think I'm -- I'm going to go with the proposed amendment or a version of it rather than, mayor, with all due respect, the suggestion that you made, which I think still affords the option of having the mayor be the nominator rather than one of the committees. Can you -- I got an email this morning from one of the commissioners on the CDC indicating that the CDC recommended that either the health or the housing committee make the nominations. Was that their recommendation? >> Yes, ma'am, that was their recommendation last evening, that those would be the two committees that would seem to make the most sense since things that the commission is generally concerned with either relate to Austin public health or neighborhood housing and community development. >> Tovo: Did they want us to choose between the two or have some appointments done by one committee and some by the other? I shouldn't say have the appointments done. The nominations done. >> As I understood the discussion last night they really wanted the council to make that decision, that probably, you know, one of the suggestions that was made was that three maybe would come from one committee and two from another and then the remaining two could be decided amongst those two committees. >> Tovo: Okay. That makes sense to me. Does the -- when you look at the course of the items that go before the CDC, would you say the majority are housing versus health? What would be the right ratio of those appointments if we wanted to divide up the nominations based on workload?

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>> Yes, ma'am. I would say that probably the majority of their discussions do relate to housing since affordable housing is obviously a great concern to Austin public health as well. That is a joint concern for both of us. But I would say that we discuss those issues predominantly as part of the meetings. >> Tovo: I would say as those -- my proposal -- my suggestion would be then here that we identify those two council committees as those who would provide the nominations to the full council and have them -- the larger number of them be nominated by the housing, the council housing committee, and the rest nominated by the public health committee. >> Mayor Adler: When you asked the Texas department if -- what their thought was on having a council committee or committees appoint seven of the people and the mayor appoint one person, what did they say about that? >> So I'm not sure we asked specifically about the mayor appointing one person. So that is something we would certainly be willing to take back if that is the will of the committee. >> Mayor Adler: I would like to know what their thoughts were, again, because, you know, it wasn't a deficiency. It was a suggestion, and the suggestion was based on

appointments. >> Yes, sir. >> Mayor Adler: And there are other ways that this council could ensure that there were multiple stop points or multiple people involved other than just having it be the one. And, again, I -- whatever we do, I would like the discretion to be placed with the council without it going

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into the bylaws. But I would like to have that question because I don't think that's something that the commission has [indiscernible]. And I'd also like to know what the basis for them suggesting that did assistance it's just a nomination as opposed to an appointment, from a regulatory standpoint, there's an indication or a preference or a presumption that it should be one as opposed to another. Thank you. >> Tovo: Other comments on this item? Okay. Any other comments on the other amendments? >> Alter: I think this is the second or third time we've seen this item. Is there a time urgency for moving forward? >> Yes, ma'am. From my standpoint, there is. We have a monitoring visit coming up on August 20. So we would certainly like to get this issue resolved if possible. I'm aware that, you know, this -- you know, whatever recommendations come from this particular committee would still have to go before full council. So but we certainly would like to be able to demonstrate to them that we have moved this issue forward at that monitoring visit. >> Alter: How quickly would you be able to get the mayor's questions answered? >> I will go back and work on those today. >> Alter: So I'm wondering if it would be possible for us to forward this to the full council so it could be on next week's agenda and we would have an opportunity to have an answer to the mayor's questions if we can be flexible in that way or not. You know, I just -- what I've heard over and over is that they wanted it switched, and so -- but I

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think it's perfectly reasonable to ask question and see if there is that flexibility. >> Yes, ma'am. >> Alter: I don't know what others think about that. That would allow us to have time and I would be comfortable. We can forward it with a -- I'm not sure what the appropriate way of doing it since the timing with that visit and our meeting next week, if we can keep it moving but have an opportunity to resolve that. I don't know, mayor, if that would provide you with a measure of comfort moving forward or not. >> Mayor Adler: It would. I would -- I think we should have this go forward, and I'm prepared to either vote for this if we don't express an opinion as to that issue or vote against it if we're going to express an opinion on that issue. Either way, I think we should forward it on to the council so that the process continues to move forward. >> Just to clarify -- to clarify, you are okay voting for it as written? >> Mayor Adler: No. I would vote no -- I would vote for this if we were not taking a position as to that particular issue. But if we're going to approve it in total, then I will vote against it, but I still think we should send it forward to the council. >> Troxclair: Let's continue through the rest of the document, and we'll see where we get. >> Would you like for me to continue reading verbatim or just let you know what sections are being amended. >> Troxclair: That sounds good, if you can let us know what's being amended. I think -- were there any -- is everything the same as what we've gone over in previous meetings without -- or

no? There's additional changes? >> No. >> Troxclair: Okay. >> [Off mic] >> Troxclair: Okay. Let's continue. >> Okay. >> Troxclair: Thanks. >> Article 3c, to stagger the terms after assuming

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office in 2019 the seven appointed members nominated by council committee or council committees and appointed by council shall serve a maximum of two consecutive four-year terms in compliance with the city code. Shall serve an additional 2-year term with two additional four-year terms in connection with the city code. After these initial terms have expired the subsequent terms of each member shall not exceed the maximum of two consecutive four-year terms in accordance with the city code. And this amendment addresses the lack of staggered terms with -- I mean, which occurred after the ten-one transition. >> Troxclair: Members, any questions? >> Article 3h, notwithstanding section of the city code at any time by an affirmative vote San Francisco eight of its 15 members the community development commission may remove any of the eight democratically selected members and may recommend to council the removal of any of the seven members appointed by council. The board may vote to remove or recommend removal of a board member for cause, including but not limited to the following reasons. One, failure to perform the member's responsibilities. Two, conduct or behavior that the board deems to interfere with the business of the board. Three, conduct or behavior that the board deems to negatively impact the community's confidence in the community development commission. A board member's vote for or against an item on the board's agenda is not relevant to a removal decision. And based on additional guidance from tchca this amendment clarifies the process by which a member may be removed from the commission. I'm sorry. The board must provide a democratically selected board member who is subject to removal with an opportunity to be heard.

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If the board member is present at the meeting in which the member's removal is on the agenda the member must be provided a minimum of five minutes to state the reasons for which the member should not be removed. If the board member is not present at the meeting, the member may within ten business days of removal decision submit to the board chair or to the board liaison a written request to reconsider the removal decision. A request for reconsideration properly submitted by a former democratically selected member must be included as an agenda item for the next regular meeting of the board. And the fortunatelier member must be allowed a minimum of five minutes to state the reasons for the former member's request for consideration of the removal. The city clerk shall retain minutes of the board's discussion -- >> Troxclair: You don't have to read it verbatim if you don't want to. [Laughter] [Overlapping speakers] Sorry. >> That's fine. That's why I asked earlier. >> Troxclair: Sorry if I wasn't clear on that. Do you want to summarize any other -- >> No. I will -- >> Troxclair: Okay. >> So basically this particular change has to do with the removal of any of the -- of the members of the commission. You know, we previously had understood that the responsible organizations for the eight democratically selected members would be able to move for a member's removal with additional clarification from

tchca, they clarified that actually the commission would be able to remove any of the eight democratically selected members and then make a recommendation to council for the removal of any of the seven members that were nominated and selected through the council process. So and then it just basically lays out the process by which someone that is subject to a vote of

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removal has an opportunity to be heard and then, you know, request a reconsider if the person is not present at the meeting in which -- at the removal discussion takes place. >> Mayor Adler: Did you say that that recommendation comes back to the council? >> So through our discussions with tchca, the commission actually, you know, is the only body that is able to remove the democratically selected member but they could then recommend to the council for the removal of any of the members that were selected or appointed by the council. >> Mayor Adler: I misunderstood. Okay. Thank you. >> Okay. So 3i is regarding additional training requirements in accordance with federal guidance. >> Troxclair: I guess before we move on, on the previous item, I still don't really understand this and I'm still a little bit uncomfortable with it, just a majority vote being able to remove a member for any reason. But I understand that this is what you feel like the direction is, so. . . >> Yes, ma'am. >> Troxclair: I'll just state for the record that I don't like it. [Laughter] Okay. Go ahead, Myrna. >> Article 3i is with regard to training requirements in accordance with federal guidance. Do you want to expand on that or. . . >> [Off mic] This particular item actually has come to this committee before and been previously approved. It's just in an effort -- and this was a recommendation that was made by some of the members of the CDC to make sure that they're receiving the appropriate training on their responsibilities, especially with regard to the federal funding.

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>> Troxclair: Thank you. >> Article 7k is with regard to posting -- or making available audio or video recordings of the meetings. >> Troxclair: Okay. Members, any questions? Mayor pro tem tovo? >> Tovo: So with this model, I see the tchca provided guidance on the process of removal. This modeled after other similar commissions in other places? >> Yes, ma'am. The guidance that they provided is based on the guidance from an organization called cap law that works with a lot of entities, public and private that receive csbg funding. The guidance we received from tchca aligns with the cap law guidance on this issue. >> Tovo: Did they give you a sense of how many organizations of this sort had a removal process versus don't have a have a removal invest is it pretty common? >> I don't know that we had that particular discussion. >> Tovo: Okay. And is it -- I assume from the wording that it would be a simple majority? Is that also -- did you discuss any other alternatives, such as having supermajority or. . . >> So there was a discussion with the attorney with tchca and our city legal about how many members would need to make that vote. The reason that eight were selected is to make sure that, you know, the democratically selected members would have representation in that number. So I don't know, San redaction -- Sandra if you would like to add anything. >> Sandra Kim with the law enforcement. -- With

the law department. That's what the state actually suggested was number 8. >> Tovo: Thank you. >> Troxclair: Any other

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questions? Is there a motion? Councilmember alter? >> Alter: Given the reservations that I'm hearing on the committee, the time sensitivity, I would move to forward this to council with direction to resolve the questions raised by the mayor and provide any written clarification that could be provided on the issues that councilmember troxclair raised about majority [indiscernible] 1% off so that we have further information for Thursday. And I think it would be really helpful to provide a memo to council that outlines some of the issues that went into the need for these revisions as well as the guidance that we've received thus far so that we don't have to be spending time on the dais rehashing that information. I know that's a lot of information, but I'm trying to be mindful of the need for us to be sure we don't put any of these funds at risk but also making sure that folks are comfortable with the procedures that we're following and that we're setting up a process that will yield the results that we need for these important decisions. >> Okay. >> Alter: And good luck writing that. [Laughter] >> Troxclair: Other additional comments? Mayor pro tem tovo. >> Tovo: I'll second it but I want to suggest a possible amendment that we actually recommend the items, we recommend most of them and then just forward the two that -- around which we wanted to have more discussion or around which there wasn't consensus. >> Alter: I will accept that as a friendly amendment. >> Tovo: As I see those, I believe it is article H would be pulled out and article 3a. 3a2.

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Is that correct? So that we recommend all the other amendments and we just forward those to -- >> Mayor Adler: 3a2, with 3ac? >> Tovo: Yes. Article 3a2 and 3c. And -- >> Mayor Adler: And -- 3a2 and 3c? Because the language is repeated there. >> Tovo: Yes. >> Troxclair: So those three sections. Okay. That makes sense to me. Mayor, are you comfortable with that? >> Mayor Adler: Yes. >> Troxclair: Okay. There's been a motion and a second. Okay. There's been a motion and a second. All those in favor please raise your hand. All right. Passes unanimously. Did you have any other comments, mayor pro tem tovo? >> Tovo: That's okay. I was trying to see if there were -- H is actually -- has some completely noncontroversial things about audio, but, inaccuracy it's not worth parsing it out. Okay. >> Troxclair: Thank you so much. >> I just wanted a clarification. On the items that you pulled out for us to report back to you, mayor and council, do you want us to bring those back on the August 23 meeting with the additional information or at a later meeting? >> Alter: My motion was to -- if I might. >> Troxclair: Yeah. >> Alter: My motion was to move it forward to the full council next meeting of the council. So on the addendum, you'd put this item on the addendum for next Thursday so you this can be resolved before the 20th monitoring meeting and to provide the clarification in a memo of some of the things that have

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surfaced today in terms of the background so we can focus in on those things and that we have clear legal guidance on the parameters with which we can address the concerns that have been raised by the mayor and by councilmember troxclair. >> Thank you. >> Mayor Adler: The only issue is that when we come back the next agenda is the August 23 meeting, which I think is three days after the visit. >> Alter: Oh, okay. >> Mayor Adler: But I think we still want to put it on the addendum so it moves forward. What we had heard was it was okay for them to be able to say, look, this is moving, action is being taken. >> Alter: We've had so many meetings lately. [Laughter] >> Troxclair: Okay. Thank you. Members, I anticipate that there is going to be a lot of discussion on item number 5. If we think that we can get through the other items on the agenda relatively quickly it might make sense for us to go ahead and take those up and circle back to item 5 so that we have the rest of the meeting to do that. I know we do have a couple of speakers here as well to speaker on item 5 so I want to be respectful of their time, but I guess the clerk and the auditor believe that we can take up six, seven, eight relatively quickly. >> I think six and eight, certainly. Seven I don't know the -- my presentation is very short, but I don't know how much discussion there will had been on that one. >> Troxclair: Okay. Let's go ahead and do six and eight and then we'll circle back to five and then leave seven for the end. >> Okay. >> Troxclair: All right. >> Okay. >> Hello, Jannette Goodall, city clerk. Item 6 is an appointment recommendation to the Austin regional intelligence center, and so this is being submitted as a recommendation from the public safety commission to

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appoint Peter stefanson as the city's representative on the privacy policy advisory committee. >> Troxclair: Okay. Any other comments? I know at least when I met with the auditor yesterday we didn't have a whole lot of backup or information about this item. So any other details that you want to share with us? >> Rebecca Webber, on the public safety commission, and I put into the recommendation section 4 and section 6 of the interlocal agreement about Aric that lays out the provisions for the policy privacy -- make sure I call it the right thing, the Aric policy privacy committee. A little background is that there's five members of this committee and they're appointed by the various municipalities and jurisdictions in central Texas that take part in Aric, and Austin's community advocate retired from the committee last summer and so it's been open, an open seat, and in April the public safety commission passed this recommendation that's in front of you today and recommended that Peter stefanson be appointed as the community advocate and he is here today. And I can answer any other questions about the recommendation. >> Troxclair: Okay. Is there -- does this have -- is this -- do you live in Austin? >> I do, yes. >> Troxclair: Okay. Members, any questions about this? >> I can just briefly summarize a little bit more if you'd like me to. >> Troxclair: I would, thanks. >> Okay. So I think everyone would know what Aric is. The Austin regional intelligence center. And the entities that take part in it have an interlocal agreement that basically allows for information sharing for

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public safety purposes. But that also kind of implicates then civil liberties issue and that's why the interlocal agreement sets up the committee, which on page 2 of our just quoting from the interlocal agreement, section 6bc lists the five people that are supposed to be on the privacy policy advisory committee. They are there to advise the executive committee, which is section 4 that I quoted in the recommendation. The executive committee is the heads of the five law enforcement entities that are represented at Aric. So there's supposed to be an executive committee that meets and has responsibility for writing the privacy policy, and then there is a privacy policy advisory committee that also is supposed to meet. They advise the executive committee. Both entities are supposed to be meeting regularly and reporting. And as I laid out in page 3 of the recommendation, that really hasn't been happening. Like, the process has not been done. >> Troxclair: Okay. Does everybody have -- I'm not sure I have the recommendation that you're talking about. Did you -- were they passed out? >> I don't have them -- >> Troxclair: Yeah I have the -- I mean, I have the recommendation for the public safety commission. Is that what you're talking about? >> That's all that I know that you have. >> Troxclair: Okay. >> Like I said, the recommendation itself quotes the sections is of the interlocal agreement that I thought were pertinent to this issue, to this process, where by there's supposed to be an advisory committee advising the executive board of Aric regarding what this policy -- what this privacy policy entails. >> Troxclair: Okay. Great. Can you tell me how many people applied for this

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position? >> Only one. And that is Peter stefanson. >> Troxclair: Well, we appreciate your interest. >> So the public safety commission had agenda items regarding the Aric policy privacy committee three times between last summer, when Greg foster retired from the city, formerly Austin's appointee, up to last April, when we passed this recommendation up to you, and Peter was who came and had interest. >> Troxclair: Okay. Do you need -- if but need help advertising that -- these kinds of vacancies in the future I'm sure we would be happy to help. I'm sure you are very well qualified but it's always good to let the public know that there's -- >> I can explain more about how that happened. So when Greg foster retired I put an agenda item on the public safety commission agenda I think for, like, fall 2017, about then, saying that we -- you know, we would address this issue and I was directed by the city clerk's office to not do that, hold off for further directions. That never happened and six months later I put it on again, that's where we are today. As far as I know it was never publicly posted on the clerk's website. It was posted in that study on the agenda three times. Does that make sense? So if there's a process for this to happen, I don't know about it and, you know, maybe that's one of the reasons why, you know, we're here asking for more guidance on it. >> Troxclair: Okay. Councilmember alter. I'm sorry I thought this was going to be quick. Now I'm asking a lot of questions. Councilmember alter. >> Alter: I think mine will be quick. I wanted to first of all thank Mr. Stefanson being willing to serve and ask if you can briefly in a minute or two share more about your qualifications beyond what's in here. >> Certainly, I'm an attorney with the Texas civil rights project, focus on criminal justice reform,

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a statewide organization that focuses on litigation and policy strategies to focus on ways we can improve the criminal justice system in the state. We have offices here in Austin where I'm based out of, and I came to learn about the Austin regional intelligence center earlier this year when I spoke with lieutenant Matt Greer who heads up Aric and represents Austin police department in their executive role in overseeing Aric. He indicated to me that this position was available and that they were interested in having a community advocate serve in that role and because of the work that we do it was something that I felt I could lend my experience and expertise to regarding criminal justice issues in the city and the state, as well as my interest and sort of knowledge in the intelligence gathering and surveillance technologies that Aric specifically uses. >> Alter: Thank you. >> Troxclair: Okay. Members, any other questions, or is there a motion? >> Alter: I'll move to approve. >> Troxclair: Is there a second? There's been a motion and a second. I want to just say thank you as well for your willingness to serve. I'm -- I feel comfortable moving forward this time but maybe if we can get with the clerk or have some additional communication for future postings so that we can let the community know when there are vacancies available that would be great, and I appreciate your work in trying to make sure this gets done. So okay, motion and second. All those in favor please raise your hand. Passes unanimous summary -- unanimously and welcome. >> Thank you. >> Mayor Adler: Thank you. >> Troxclair: Item number 8 is just committee meeting schedule. I know that our next few meetings are on the same

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week as a council meeting and so I think there was a request from councilmember alter to just look at our schedule and see if it's possible to potentially move those dates to an off-council week, which makes sense to me. I think you were going to look at what those dates were and possibly offer alternatives really quickly. >> Yes. Looking at this, I noticed that -- unless I have -- I'm assuming I have the most up to date information in talking to the city clerk and agenda office. I believe September and October are on non-council weeks. They are on the same day -- both of them are on the same day as the Austin energy oversight meeting by it is a non-council week for September and October. The November meeting is a council week and my proposal would be to move it because the November is usually a combined meeting for november/december so I'd suggest moving it to early December that following Wednesday as a non-council week. Basically moving it out a week from I think it's on November 30 out until December 3. I had these dates in front of me but I don't know where I put it so I'll look at the electronic version. >> Troxclair: I don't think it's November 30 because that's a Friday. >> It's November -- currently scheduled for November 28. >> Troxclair: November 28, okay. And I would suggest moving it then out to December 5. >> Troxclair: That's the only one there's -- where there's -- >> It is. But if there are other conflicts or reasons why we shouldn't be meeting on those days -- at this point based on the council calendar approved earlier in the year, not counting any special called meetings, both the September

meeting and October meeting are in off-weeks. >> Troxclair: Great. I would be comfortable moving the November meeting to December 5. Is there any other comments or questions on this one?

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>> Alter: I'm comfortable, the move from November to December. I just want to let my colleagues know I'll be absent for the September meeting so if you're going to be absent please make sure that you let the chair know. >> Troxclair: Thanks. >> Certainly if we need to look at dates for that meeting, I think there -- I would hesitate given the audits that are scheduled and kind of the exit process with management, I think -- I would hesitate to move it earlier but we could certainly look at an early October date if we needed to. >> Troxclair: What is the September -- is that the 26th -- >> Yes. >> Troxclair: September 26? Okay. >> Alter: I'm fine with you going without me, going on without me. I just wanted to let you know for quorum purposes. >> Troxclair: Okay. So do we need a motion to change our meeting date or -- for November or -- is there -- >> I think I can just work with the agenda office to move that. >> Troxclair: Awesome. Sounds good. Thanks for putting this onto our agenda. That brings us back to item 5, legal representation for board of adjustments during interpretation appeals. We do have a couple speakers signed up so we will hear from them first. Brian king. Sure. Thank you for okay here. >> Councilmember, my name is William Burkhart, I chair the board. >> Troxclair: Okay. >> I know you've all seen the resolution and you got my email regarding the genesis of it. I wanted to go back and kind of mention again, though, that the resolution that brings us here was begun kind of during the last phases of draft two of codenext.

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And, you know, the intent was that we wanted to be ahead of the curve on this with respect to the anticipation of significant appeals that might occur when the new code was adopted. So where we are on the desire to have a separate attorney, during the appeals that we've had, we've had an issue with perception of ex parte communication, and it's not a performance issue with respect to the attorney or the city attorneys. It really has to do with a perception that we were trying to rectify and correct in advance of the anticipated appeals that would be coming forward from codenext. So that will still happen regardless of whatever iteration the new land development code takes. We expect there will be additional appeals. And the idea that the city attorney is communicating with one party in an appeal of development services and then mating with the board, which is an independent quasi-judicial board who, again-- whose decisions are appealed to district court, the idea that a decision could be challenged on that basis is a reality. We had one significant case recently that could have -- if it had not been resolved amicably or relatively amicably between the parties might have gone significantly further than perhaps the state court of appeals. So in the end it's a financially prudent decision to provide the board with independent council in the case of an appeal that -- or in the case of appeals that are presented to it.

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I think that pretty much summarizes it, my position on it, and I think the board's as well. You've seen the board's resolution and I can read a little bit of that if you'd like. >> I think it's worth pointing out that the ask that we're coming to you for today is in regard to code interpretation cases, not the standard run of the mill carport setback variance. Interpretation cases, I've been on the board for a dozen years and we always go into executive session on interpretation cases and we usually go into executive sessions with the attorney that has been representing the city, on the city's side of the dispute. So the attorney that's been advising folks over 505 is now in executive session with us and the public perception is that that's skewed. I have felt that way for a long time and thought we should be looking to an outside attorney for those particular cases. We don't have that many. We have maybe a couple a year. So the ask is only for billable hours that would be for a couple hours at a couple of meetings and maybe a couple hours of prep time. But the payback in public perception is enormous and I've heard comments over my tenure about this very issue. So. . . >> Troxclair: Okay. I appreciate y'all bringing this up. Did it -- so is this a request that passed unanimously at the board of adjustments? >> It did not pass unanimously. We had one absence the night we voted. We had postponed it several times. We had one absence and one abstention. >> This original resolution passed 11-1. >> It did not. >> In the the backup. >> Troxclair: Can you just -- to us -- do you know who the abstention -- >> I think [indiscernible]

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Mcdaniel was the absence and [indiscernible] Was the abstention. >> Troxclair: Okay. >> And we had no alternates that night. >> Flannigan: Chair? >> Troxclair: Yes. >> Vote was 11-1 -- 11-0 on April 10, 2017. It was unanimous on that resolution. It's in your backup. >> Troxclair: Yes, okay. It says the public hearing was closed on Eric Goff's motion so he must have been there. Anyway -- >> This resolution was -- all right. My recollection is that that resolution did not pass on April, in the April meeting. >> Troxclair: I was just curious. Councilmember Flannigan. >> It was a super majority regardless. >> Definitely. >> Flannigan: I'm reliably assured my commissioner voted against it so there was no unanimous -- >> I think I'm right. I may not -- >> Flannigan: I spoke to my commissioner. I haven't spoken to any other commissioners. >> I'm positive I'm right on this one. The ultimate resolution included the appeals issue with respect to dsd as well the recommendation to have an attorney was voted as I described. It was a vote of eight, eight for, one abstention, and one absence -- excuse me, nine and seven. One absence and one abstention. Otherwise unanimous. >> Flannigan: I don't think otherwise unanimous is a phrase. [Laughter] >> Troxclair: I only ask that question because I was curious if there was discussion or what the other side of -- what the other perspective on this item was, but maybe we will get to that by listening to the questions of the other committee members. Mayor pro tem tovo had had a light on. >> Tovo: I was trying to clarify that issue because what we have in our backup indicates -- and this is the

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form from the mayor's office. I believe the backup that we have refers to one of the two resolutions, and that one does appear to have passed unanimously on a motion from Eric Goff to put forward the budget request to ask city council to explore the cost benefit and other cities' use -- I'm going to add a little apostrophe there, use of outside council to represent the board on interpretation cases due to potential conflict of interest and perception of conflict of interest. At least the minutes on that point recorded it as 11-0. >> We had two resolutions. >> Tovo: I think there must have been a subsequent resolution and I don't have information about that vote. But the chair has said that one did not pass unanimously but it doesn't sound as if a member voted against it in your recollection. So -- >> One member -- no members voted against it, that's correct, councilmember. >> Tovo: Okay. Thank you. >> Troxclair: Councilmember Flannigan, do you mind explaining what your commissioner's opposition to this idea is? >> Flannigan: Yeah, happy to. So my commissioner's concern is also my concern, and her -- she brought it to my attention and we've spoken about it. So I have a lot of concern over the phrase "Perception." Because if we're going to dictate how the city runs simply based on perception, when there is no evidence that anything bad has happened, then this opens up a pretty unending well of outside consultants, outside attorneys, it allows the loudest voice even when it's one voice to claim that they are the perception and I just don't think that's a good way to govern or do policy making and it's certainly not how courtrooms work. And as Mr. Burkhardt has kind of intimated the board occupies this very

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interesting middle space where they're making rulings as a quasi-judicial board. I think the facts are the facts, and when you're talking about code interpretation, much of code interpretation is about the intent of the council that passed it. So it is important that the city be the voice of what a code interpretation is because that's what the interpretation means. Having an outside council, I don't think, adds anything but time to the process and undermines the -- further undermines the public trust in an office that I think does a really good job, especially given there doesn't seem to be any evidence that they haven't done a good job. >> Troxclair: Has our staff would entail or how much it would cost? Anybody? >> I can briefly respond on the number of cases, but, I mean, I will tell you that it's a level of complexity of the case. You know, again we had one case that might have run into a significant amount of billable hours and we have many others that -- or a few others that we've had typically would not be. >> The city clerk's office has not. Rodney Gonzalez was here to hopefully answer questions specifically relating to development services so I think we're trying to track him down to see if he's still in the building because he was here. So if you give me a second I'll go out and see if I can find him. >> Troxclair: Okay. Councilmember alter. >> Alter: Thank you. Ms. Clerk, can you please speak a little bit to the type of case where this is envisioned so that we understand that better.

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I know you said it wasn't a variance and it wasn't typical run of the mill, but can you provide some clarity on that? >> Certainly. Again, these are appeals. An appeal is different from a variance request. And so what we're talking about is an interpretation by the development services with respect to how something might be implemented. So we had one case called the life Austin case, and it was a significant case that had been challenged. I believe it started in 2008. Finally ended up following through in district court, resolution in district court to allow the board of adjustment to hear the interpretation request somewhere around 2015. So in these kinds of cases can take a while to manifest. We finally did hear that case originally I believe, again, in 2016, late 2015, and yet that was ultimately postponed probably at virtually every meeting we had since the original hearing date. So that was a very complex case. It involved, you know, a lot of litigation just to get to the board. And that's specifically the kind of case where the perception or the reality of a potential conflict of interest with respect to the Independence of the board would potentially become a legal argument as that case moved forward to appeals if it had gone that far. Other cases are fairly minor. We've had a total of four, frankly, in the last year and a half. And, again, they tend to be -- either withdrawn or resolved fairly easily. And in many cases the board upholds the interpretation of staff. So it's -- some may be very minor but some have the potential to be explosive.

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>> Troxclair: Thank you for that. Did you have any other questions? I would like to hear from the staff member -- the city staff that has joined us on their thoughts on this issue, both of y'all, if you don't mind.
>> Sure. Absolutely. Rodney Gonzalez, I'm the director for the development services department. I understand there is a question as to whether or not staff has done an analysis as to the additional legal costs that would be incurred. We have not done such an analysis. We can certainly work with the law department in that regard but we don't have those types of job titles in our department and so we'd have to work with them to do that analysis. >> Brett Lloyd, assistant city attorney. I'm going to make a few comments and offer our perspective on the request as well as to give councilmembers some context as to what we're talking about in this unique kind of case that I don't think many of you all maybe have some background in. But basically under state law the board -- local boards of adjustment, you know, they grant variances, and that's the thing I think people think of a board of adjustment in connection with, granting variances for car ports and setback modifications and things like that. But state law also gives the board of adjustment as a quasi-judicial body authority to consider appeals of permit approvals and other sorts of decisions that affect really the interpretation and application and enforcement of city code, and it's a broad right that the board has. The board is unique in that regard. Board decisions are appealable not to council but to district court. Under the rules of professional conduct, the city attorney's office represents all units of city government, and it's not uncommon that units of city government have differences in perspective. It's not uncommon that staff approval will be appealed to the board and of course

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staff believes they made the right decision. They wouldn't -- otherwise they would have made a different decision. And the board will be critical of that decision&ask probing questions. And in several cases reverse staff's approval. We have on numerous occasions assisted the board in drafting decisions that reversed staff. Additionally, Mr. Burkhart does not mention that several appeals that have come before board have been then appealed to district court. And in those cases we defend the board's decision. An example that I think I'll just mention is the short-term rental case. A few years ago, before the code was clarified to specifically address short-term rentals, the board of adjustment made a decision that short-term rentals were not consistent with the single family use and they issued a code interpretation to that effect. That was challenged in court 37 we filed court papers saying that the board of adjustment got it right. We have steadfastly supported the board and provided fair and impartial advice and will continue to do so. Because the board exercises a unique role in the process we're mindful of the need to provide separate attorneys in cases in certain -- in certain types of cases. We're available to, you know, revisit and kind of -- and consider formalizing those protocols and better communicating them. But, for example, in cases where our office has provided meaningful advice to staff regarding the approval that's being appealed or regarding the issue that's being appealed, we make sure that staff has their own attorney and the board of adjustment has a separate attorney. In a lot of cases there are issues that come before the board are not ones for which legal advice has been sought.

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An example of that has to do with -- I think there are a fair number of appeals that have come before the board that relate to the mcmansion ordinance, relate to the calculation of attic space, relate to dormers, relate to some of the more architectural requirements embedded in the mcmansion ordinance. Those are issues and this is I think surprising to some of the board members but those are issues for which we have not provided in many cases legal advice to staff. So in those cases oftentimes staff doesn't have an attorney. It's just the staff person explaining how they interpreted the code and an attorney on the dais -- or used to be on the dais with the board of adjustment there to help them understand the code, make a decision about whether the interpretation is appropriate for affirming or reversal. So we have, you know, at all times tried to advise and represent the board in a manner that is cognitive of their unique role and cognitive of the need for them to have separate representation where appropriate. So I think that at various times there are a lot of appeals, you know, over the years we've definitely had a number of appeals that have consumed, you know, a lot of time. And that's not only in advising and representing the board at the administrative level but also in court where these cases are challenged. You know, we have a case I'm pretty sure right now we have a case on appeal -- we have a couple. We have one on appeal that relates to billboards, and we may have one other as well. But it's not uncommon, especially when the board reverses staff, that there are appeals by applicants and those affected by the permits where the decision is appealed to district court. And that is, you know -- that involves representing the board and that is time-consuming and takes a lot of knowledge, expertise,

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and effort on our part. So I'm not prepared to estimate what the cost would be, but I think there are a lot of -- I think it would be significant. I also want to just -- I think my last comment will be we looked at how other cities handle advising and representing their boards of adjustment. And what we've found is that they use their city attorney's office. And the only exception is smaller cities where they hire outside counsel to do a wide variety of functions, I think that that's not uncommon that those -- that smaller cities will have outside counsel, but, again, they have outside counsel for a number of functions. The major cities that we've looked at to the extent we were able to tell, it was clear that they rely on their city attorney's office to provide legal services to the board of adjustment. And with that I'm available to answer any questions. >> Troxclair: Councilmember Flannigan. >> Flannigan: So the backup resolution -- I'm not familiar with the resolution that was apparently voted on last night. Is that right? >> We did not vote on a resolution last night. We postponed it. >> Flannigan: Okay. So there hasn't been a vote -- >> Last night, that's correct. >> Flannigan: I missed that when looking through it. The resolution in backup is from more than a year ago, from 2017. It's not something that was recently voted on, which would explain my confusion on where the votes were, because I think that was, like, a month after my board person got appointed. And the conversation since then I think has been more substantive but we haven't had an actual vote recommendation, right? Beyond the 2017 -- April 2017 -- >> No no. We did take a vote on the resolution that you should have in your backup. >> Flannigan: I thought you said you postponed it. >> That was a bylaws discussion last night. >> Flannigan: Oh. >> There was no resolution on the table last night.

[11:00:54 AM]

The resolution that I followed up to with an email -- >> Troxclair: Sounds like mayor pro tem tovo might have information for us. >> Tovo: Thank you, Mr. Burkhart. I went through my email and found that one from you, and that led me to the minutes of June -- I think June 11. I'll check that in a second. And it was discussion and possible action relate to go requirements by which the board is involved in administrative appeals and conflicts of interest ait relates to outside counsel, and it says the -- the minutes say after discussion board member Michael [indiscernible] Voted to approve resolution, Brian king second on an 8-1-1 vote, board member Veronica and Eric Goff abstained. >> I beg pardon. >> Tovo: That was June 11, 2018, and that's the resolution that I -- >> That's correct. >> Tovo: -- I think was in our backup saying the board should amend its bylaws, et cetera, et cetera, and board should retain independent legal counsel. So that passed on a vote as I think you had indicated earlier, one abstention, one in opposition, your member I think abstained. >> Flannigan: I can't remember which one. >> Tovo: I just read you the background as recorded. >> Councilmember, I think one of the issues that may have created the confusion was this has been trying to get on the audit and finance committee's agenda for a long time. So that may very well be why there's a little bit of confusion in the backup. >> Flannigan: Okay. >> Okay? >> Flannigan: Can I see that, mayor pro tem? >> Tovo: Sure. >> Flannigan: Thank you. >>

Troxclair:councilmember alter. >> Alter: I just wanted to invite either of the members of the board of adjustments to respond to the staff comments. If there were things you would like to address.

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>> Mr. Lloyd has made an excellent presentation. He's absolutely right, and the city council has defended the board of adjustment with -- in an exemplary manner. I have no problem with the consultation by the city attorney's office, but with the defense that they've provided for the board. And he's right that some of these do go on to district court and the city attorney's office does defend the board. With respect to the initial comments, though, there is still -- and as board member king pointed out there is still a potential perception, a perception in the public that the city attorney's office is defending both the development services department who is responsible for the interpretation being challenged and the decisions -- and the advice given to the board upon which decisions will be made. And there is no way to parse that. It is simply a perception issue. It's a policy issue with respect to whether you'd like to challenge the idea of acting on a perception, but it's a real issue. >> I'd further speak to -- I'd further speak to that, the perception question that you just asked. The public's perception, I've heard that from many community members. But as a board member in executive session, it is my perception that there's a conflict of interest. Mr. Lloyd reminded me of the [indiscernible], and the definite board had defendant feelings on which that might go and it felt like we were in conflict in that executive session to move forward our agenda and it was difficult. And I don't think if we had someone that was not ingrained in the process all the way through they would be giving us the same -- I'm going to use the word opinion rather than legal advice on where we were going in that particular session. So my perception is there's

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a conflict of interest. The public's perception is there's a conflict of interest. >> Troxclair: Councilmember Flannigan. >> Flannigan: I fully respect your opinion in this matter. I don't think you speak for the public. And I can speak for my district because I'm elected to do so. There is no perception of the board of adjustment in my district pro or con. So I think it's just to be clear that we want to avoid, just to speak to my colleagues, I'm always trying to avoid this notion that we've seen spill out of federal and state politics of it's a fact that they feel it as opposed to what the facts are. I think it's really important that we don't fall into that trap that's happening at other levels of government, where we create senses of emotion and then respond with policy to senses emotion that are only really represented by the small handful of folks that come into our chamber. I would love to see more folks coming into the chamber and broadening the perspective we hear, but we don't. We should be very careful when we intimate or pass resolution that's codify what the public's perception is when as we all know it is much more varied than a single statement can provide. >> Troxclair: Mr. -- Yeah? I was going to ask you a question, but go ahead. >> I just want to comment that, you know, we appreciate the comments of the board members and we're available to -- we've made an effort to try to be available with the board members to work

through some of these issues. We're definitely available. Last night they considered amendments to their rules of procedure that we advised in open session and there's a legal memo that the board released. We advised that those were inconsistent with city code but we'd made ourselves available to help work through the issues. In addition I just want to comment that board of adjustment members have different perspectives on code interpretation issues and some of them are much more critical of staff interpretations than others and that's to be expected. We also had received -- I

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have received letters in particular cases that have come before the board, questioning the conduct of board members, alleging that board members are overly involved in neighborhood associations, in matters that relate to issues that are before them on appeal. So I think there's -- there are -- there's been criticism leveled at the board as well in certain cases. We -- one thing that's important to note with regard to interpretation appeals is, when they're filed it requires legally permitted projects to completely stop construction. So, you know, when council considers, like, conditional use permit appeals and those sorts of things, there's not been a vested property right issued yet and there's not construction that's begun. But when the board of adjustment considers an appeal, it's generally once an approval has been issued and that approval is a right that the property owner has to build. When those appeals are filed and accepted and posted before the board, it completely stops construction. And so it's an important -- it's a really important process in the -- it's a really important function that the board provides in terms of being a check against staff's interpretation of the code, but there are also due process consideration that's protect the landowner's rights. So in advising the board we make every effort to ensure that the cases are looked at thoroughly, that the board has got the full history of the code interpretation that's at issue, and that the cases are resolved as expeditiously as possible so that indeed if the project turns out was properly permitted, it can proceed accordingly. So with that I'm available for any questions. >> Troxclair: Mr. Lloyd, does the -- I believe the question about whether or not there poses a legal risk

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to having the city attorney's office represent the board of adjustments, that that could be a threat to I guess the board of adjustment's decision when it goes to district court. Do you -- can you tell us whether or not you feel like there's a legal risk there? >> No. I'm glad you asked that question. Chair Burkhart mentioned ex parte contacts, and the rule against ex parte contacts, you don't -- it's a quasi--- they're a quasi-judicial body. You don't want judges in the case talking to the litigants that are before them, and that rule applies to the board members. As attorneys representing the board, we will have -- we're not board members. We're not -- we're going to talk to people that are involved, parties to the appeal, including staff. It's -- you know, when decisions are appealed to the board, we will do everything we can to learn about the issue so that we can properly advise the board. So we're aware of no legal authority, no case law that in any way calls into question our conduct with respect to representing the board. The

only case that I've found where -- and I'm actually not sure if it's case law or just legal commentary, but the only situation I've found where the authority of a government attorney to represent a separate body where there's been recognized that there should be a completely outside counsel are in cases where the body in question has the authority to either financially penalize or remove the appointed authority. So if there's a body that would have the authority to penalize councilmembers, I think a case could be made that the attorneys that represent that body need to not be the people that are

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also representing council. But in cases where there's simply going to be disagreement about the meaning of codes, there's going to be friction between city departments, that alone does not create any sort of rules -- any sort of issue with respect to ex parte contacts, with respect to rules of professional conduct. Followed. As I mentioned in cases where the law department has provided significant advice to staff regarding the -- either the case that's before the board or the overall legal issue or code provisioner, we take great care to ensure there's separate attorneys assigned. That's not always the case, but we model our procedures in that regard off of what we have seen other cities do. >> Troxclair: Thank you. I mean, I guess from just drawing on my perspective as a councilmember and the legal advice that we get in executive session, I don't always agree with the legal advice that we get and that's -- I mean, the law is imperfect and because it allows for interpretation. And I guess if I really wanted to maybe I could bring a motion to council -- I guess in times I felt like our legal department wasn't adequately representing us I guess I could bring a motion to council and ask for outside legal opinion, but ultimately, to Mr. Lloyd's point, regardless of what -- and sometimes the council doesn't agree -- the council as a whole makes a different decision than what our attorneys originally advised us. But ultimately the -- I do feel like the city attorney's office has always defended the council's decision regardless of whether or not it was their preferred course of action. So for me, at this point, I'm not -- I don't think I'm prepared to approve outside

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counsel. I understand the perception issue. And I'm sympathetic to it. I wonder if there -- but I also think that councilmember Flannigan's point about, you know, if there hasn't been a specific actual problem then it's hard for us to set policy based on a potential perceived problem. So I would be more comfortable with maybe the board of adjustment gets into a situation in the future and feels like the city attorney's office is not providing adequate representation, that maybe we -- you bring that to council and we can evaluate that on an independent basis. But I don't -- but at this point I don't think I'm prepared to approve outside counsel. But I'll be interested to hear from the other committee members. Mayor pro tem tovo. >> Tovo: Thank you. Mr. Lloyd, I think I heard you -- you had talked about the time and the time frames that are relevant to the board of adjustment. As I understood the recommendation, this wasn't -- this would not slow down -- this would not slow down the process in any way. I mean, I've watched the board of adjustment long enough as a community member, now as a councilmember, to

know when you're up against a deadline you need to you have a special called meeting because those deadlines are so hard and fast and have immediate implications if you've missed your deadline to make a determination on something. I guess I would direct that question to chair Burkhart and Mr. Lloyd if you want to comment as well. >> In fact the board doesn't hesitate to have special called meeting when we do have an interpretation case that we need to adjudicate fairly quickly. You know, and I guess to drift a little bit off that particular question, you know, the very circumstance that we find ourselves in right now illustrates the issue that we're dealing with. The board doesn't have its own independent advocate. In fact we find ourselves

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more or less at variance with the attorney that we've got right now. Simply by virtue of the arguments that are being made today. And I think that would be -- I think that illustrates more than anything the circumstance that we find ourselves in. >> Tovo: And so to get back to the question of timing, having an outside counsel to advise the board of adjustment on issues related to code interpretation would not slow down -- would not slow down the process in any way and, as I mentioned and as you confirmed, when you're up against a deadline you have a board of adjustment special called meeting because if you haven't done so it results in a decision without you having rendered one. Often. >> It won't slow us down. >> Tovo: Okay. >> And it potentially could, yes, if timely action isn't taken it would be -- it would go by default, yes. >> It's specified when we have an interpretation case it be assigned to our next meeting, and sometimes we have a special called even before the next meeting, and actually has a preferential way to do it and we've slid into the other lately but it's the next meeting we have, regardless of what attorney we're doing, we would follow the same procedure every time. >> Typically these cases take a lot of time and typically that's the best way to deal with them, in fact a special called meeting and they typically will occur at the first available opportunity between meetings. >> Tovo: Mr. Lloyd, did you want to address the timing yes.? -- Timing question? >> I just wanted to say the timing issue is not just the board's convening special called meetings. It's finding an attorney who is an expert in Texas land use law who understands city code provisions and has the necessary depth and history in this area of law to provide meaningful advice and is available to come sometimes with very short notice and clear their schedule and devote the necessary time to working

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through the issues. So I think finding somebody that can check all those boxes, that has the time available and the flexibility in their schedule to provide the sort of quick triage like legal service that is required in these cases and has the sufficient experience would be a tall order. >> Tovo: I see. Is that what you meant by the time frame? >> Yes. >> Tovo: Is that -- I assume, though, that on other issues where the city has to immediately seek outside counsel that we have some kind of rotation explicit do some pre-- some work ahead of time and -- my assumption about how this would work, that the city attorney's office would identify some appropriate candidates to provide that outside legal expertise in

advance of the need? Mr. King, how long have you served on the board of adjustment? >> Hmm. Over a dozen years. >> Tovo: That's what I thought. Well, you know, I understand the questions, and, councilmember troxclair, you seem to be suggesting that maybe doing -- you know, having it on an as-needed basis, but with a check at council is an interesting -- is an interesting idea. My concern about that is that it would throw the time lines off but, you know, there are other ways -- I would think there are other ways to maybe achieve that with a cap or something like that. But I'm going to support this. This is an issue that I've heard a request for for a long period of time now at various points. So I completely agree with the assertions about the city legal department. I think you do a fabulous job and I've seen you defend the city's position or know of you defending, haven't seen it all that many times, but -- in court and have great faith and confidence in your abilities.

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But I do think there's a need in this case to have outside representation in cases where code interpretations are at stake. And it's not -- and I can't think of examples off of top of my head but I know they're out there, where when we have a need for outside counsel for a city-related issue we do seek it because it involved city personnel or a city department, and this seems to be in line with those examples. And so thank you for the care that you've taken to explore this issue. And I'm going to support the resolution. Either here today or at council if we decide just to forward it for their consideration. >> Troxclair: Councilmember alter. >> Alter: Thank you. Mr. Burkhardt, how long have you served? >> About two and a half years now. >> Alter: Okay. >> Three years. >> Alter: Thank you for your service. I would just like to get some clarity. Because it seems like be challenges to perception issue. One is when you go into executive session and you're trying to get information about your options in the legal framework within which you're operating to make your decision on the interpretation. And then there's a question once you've made a decision, how that's defended in court. And what I'd like to better understand is, is your concern more with what happens to the advice that you're getting and the information you're getting to make your decision? Or is it when it's going to court and you're being defended, once you've made a decision? >> In my opinion, it's the question of the advice that we're getting. Absolutely. >> Absolutely. There's no question about defending. Once the decision is made, I believe the city attorney's office puts full force behind defending what the -- the decision the board has made, but it's concentrated more on the advice we get in the decision-making process of the hearing.

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>> Alter: So we could -- we could provide a funding for those situations and then assume that the city legal would be providing -- >> Right. The only ask was for representation at the meetings, not defending a decision after it's been made. >> Alter: Okay. I'm also going to support funding for those situations. I think that it would also perhaps be useful to have the benefit of city legal providing their perspective as well, but I think an opportunity for you to ask some questions and get some alternatives at that stage, given the sovereign nature of your board and given that you are -- there is this perceived conflict,

whether it's perceived only by the board of adjustment or it's perceived by the public, we have plenty of safeguards we put in place to avoid the perception. That's why we have campaign finance rules. For instance that's why we have open meetings laws. There are all sorts of things where we do this, and it's my understanding from my conversations that there is -- that questions have been raised and we don't want the sovereignty of the board questioned over these things, and if the board members themselves are feeling that it's not a [indiscernible] For the public in that regard. >> Troxclair: Councilmember Flannigan. >> Flannigan: So I think -- when I read the resolution, which I'm not sure is operative because it doesn't sound like there was a vote on the resolution. >> Yes, there was a vote on the resolution? >> Flannigan: It's been very hard to track all the votes. >> Yes. >> Flannigan: But there's two elements to it. I don't -- from my perspective, the outside counsel isn't a timing question. Mayor pro tem, I think you're right, you'd end up having three or four attorneys on the list, previously vetted and then you'd call them up. For me the timing thing is the other half of the resolution that relates to

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having all the appeals come to the board and not allow the staff to work out things in advance. >> Councilmember, yes. That's basically -- that's not the issue that we're talking about today. What we're talking about today is when an appeal is brought to the board through the mechanisms that we have in place now or through future mechanisms that may evolve as change to our rules of procedure. But regardless, that's really separate from the issue on the table today. >> Flannigan: I see. We're really talking about the outside counsel piece. >> Yes, sir. >> Flannigan: I would just say, Mr. Burkhardt, it's a very -- it's a very awkward situation to call into question the legal advice you receive. That's going to be an awkward situation. And when the legal department defends their work, I don't know that it's fair to then point to their defense of their work as evidence of your disagreement. Like that you disagree with them and that the legal department showed up to say, no, we're doing our job, and then pointing to them disagreeing with you as evidence of it. I think that's a little bit of a circular logic moment. We -- as councilmember troxclair has said, we, the council, often at times disagrees with each other and with our legal advice. That's the nature of the beast. And I don't know that outside counsel is going to provide any more believable legal advice if what we're really talking about is board members who want to rule a certain way and the legal department doesn't like it. And that's entirely your right just as it is for the council to make the decisions we want to make regardless of the advice we get in executive session. But I'm glad to hear that we're really just focused on the outside counsel question and not the other half of it. >> Correct. >> Flannigan: Which would be a whole other conversation, I think. >> Troxclair: Mayor. >> Mayor Adler: So I apologize for having to duck

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out for that five minutes and I don't know if the questions I'll ask have already been asked in that five-minute period of time and I apologize. So help me understand if -- how this works. Now, the city has a legal position with respect to the interpretation of an ordinance, and someone challenges that

interpretation as it's applied to them and they take that appeal to the board of adjustments. Is that the limited number of appeals that we're talking about? Is that the situation? >> It is. Generally, that's how appeals surface. They're in connection with a permit approval. And our code -- I don't want to go too far off in the weeds but I do want to point out our code is very unclear about how interpretation in board appeals work and we take great pains to interpret the confusing procedures in our code in a manner that maximizes the board's authority because we think they have broad authorities appeals under state law. Usually, mayor Adler, appeals do arise in connection with approvals of specific permits, but we also have a process that I think could be much more clearly defined and described for what we would refer to as non-project appeals. And what that is is where a citizen submits a request and pays a fee to the director and says how does this -- what does this provision mean? How are you interpreting this provision? Would this provision allow the following kind of development? And really ask the director to write a thoughtful decision that explains how that -- what they think that provision means and how it applies to the types of development that are referenced in the request. And that then creates a decision that can be appealable and gives the board a chance to weigh in on -- >> Mayor Adler: Is that the current procedure or what you're proposing take place? >> It's a current procedure but it's underutilized and not very well defined in city code, except in certain limited instances, but those

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are the two kinds of appeals, non-project and project-level appeals. >> Mayor Adler: So staff has an interpretation. That interpretation then can be challenged. And it can be challenged to the board of adjustments. At that point, the staff comes in and says this is how we interpreted the ordinance and we think this is how this ordinance should be interpreted or this rule or this whatever. The board of adjustment has the discretion then to listen to that and decide whether or not they think that that's right or not. So the board -- is the charge to the board of adjustments to rule on the legal interpretation? Of the ordinance? >> Yes. And if it's a permit appeal, the interpretation is one that's associated with a permit, then that also -- what's really being appealed to them is the permit. And so if the board reverses the interpretation, they're also reversing the permit approval. And we advise the board -- we advise the board on the extent to which the provision we advise the board to which the provision is unclear. It's not uncommon that there is some room for interpretation. >> Mayor Adler: So if our staff may have an interpretation of an ordinance, it then goes to the board of adjustments and the board of adjustment says we don't agree with that interpretation, we think the staff's interpretation is wrong. And it should be interpreted differently. Does staff then adopt the board of adjustment's interpretation as concerns that ordinance from that point forward? >> Yes. And we do everything we can when we're advising the board and the board decides that interpret -- decides to reverse staff to try to help craft a decision that is amenable being applied in other cases.

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There are several examples -- >> Mayor Adler: Can the city appeal the the interpretation of a legal opinion? >> Yes. >> Mayor Adler: So it may not be that the staff just accepts and then enforces the board of adjustment interpretation thereafter. The staff can -- the staff or the city can challenge the board of adjustment determination. >> And to my knowledge that ha has not occurred, but it is an option. >> Mayor Adler: But it is an option to do. And it seems reasonable to me to be able be an option to be able to do because with all due respect to the board of adjustment I'm not sure that the city should or should not give the power or weight to a board to be able to interpret an ordinance or a rule that the city believes should be different than that. So -- but in that instance then, I'm confused as to what happens when it goes to court because I might have the city wanting to affirmatively say the board of adjustment got this wrong and the interests of the city are so great that this interpretation of this ordinance should not be allowed to go forward. >> If the -- unless the city, the city departments that are affected by the decision decide to appeal that decision, then the board's decision is the city's decision and the board is the sovereign decision maker as to what -- how the code provision is interpreted. And so if that decision is challenged in court, we defend the board of adjustment as the city. And so -- >> Mayor Adler: And who represents the department? I mean, the department wants to challenge the interpretation, who represents the department? >> Unless the department appeals the board of adjustment's decision to district court, then the

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board's action becomes the final city decision. >> Mayor Adler: In the event of an appeal who represents the department? >> In the event that the department appeals to district court? >> Mayor Adler: Yes. >> Because that has never happened before, I cannot say, but it would be our office. We would assign appropriate counsel to handle those situations. >> Mayor Adler: And could we have the situation where the city of Austin is-- is appearing in the case to defend the ordinance and the city council is in court in the same case defending the ordinance? >> I think that is theoretically possible and I think that that would raise some questions that would be worth looking at and exploring, but again to my knowledge having represented the board many years, that unusual situation has not occurred. >> Mayor Adler: And I gather that. I have some concerns because of that. And if you appeal that back, the underlying concern that would result in the district court is I think what's being described as being the underlying concern about being in that room? In other words, I wouldn't want the city staff to be predeposed to defend the board of adjustments because it's wrong because the board of adjustment rendered that kind of decision that was contrary to the city's view. In other words, I wouldn't want it to fell compelled to do that if it thought the city's interest was such that the department felt the city's interest was such that it needed to be challenged and so I'm concerned about that potential conflict for someone sitting there trying to figure out how to navigate that. So last night -- at the same time we're doing this obviously, there's the other elephant in the room that is the questions about the

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procedure of the board of adjustments and the interpretation of the local government code that says the board of adjustment can set its rules so long as they're consistent with the ordinances passed by the city and the ordinances passed by the city include the land development code which has timing and the like. So at first blush it seems to me that there's a potential conflict between the board of adjustment setting rules that are contrary to the ordinances that were adopted by the city if in fact that's germane to that discussion. But I'm involved in it or not. But I understand that that question may have come back up to the board of adjustment last night and there was an effort to get further comment or consideration or input concerning the appeals process. Is that what's happening next at the board of adjustment? Yes. >> Mr. Mayor, the resolution that you have, you know, one of the items on the resolution, the first one, is the board of adjustment should immediately amend its bylaws and/or rules or procedure to have interpretation of cases filed directly with the city clerk, et cetera. And that actually is the resolution that we were trying to act on last night. And where we are on that is we have agreed to try to craft with legal a resolution, change to the procedure that will bring what the state recognizes as the authority of the board into -- and the land development code into more compliance. So that's the discussion that we were having last night. This was the separate part of the resolution that was forwarded to council, but that was voted on in June. So that's the issue that we're trying to bring into

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compliance. And again, we held hearings on this probably starting in January of this year. Actually, it started in January and got postponed because of a rules posting or because of a posting error, began in February and then continued on. We've had many hearings on this and this is the result of it and that's what we were talking about last night. >> Mayor Adler: So where I am on this I think is I share some of these concerns. I'm not sure that this is the right resolution to it and I'm not sure how this resolution would be implemented because I would want the city attorney's office to be present in any executive session because this is an arm of the city so I think that it's important that the city is able to give -- the city attorney is able to give executive session advice on questions that the board of adjustment's is considering on an appeal. And I don't know if you can do that at the same time, that in one or two cases that we're talking about there's an opportunity to have a different voice. So I hear the concern and I understand the concern and I share that concern. I'm not sure what the right resolution is and I'm not sure that it alone covers that. I mean, if there was a suggestion I don't know to postpone this here so we could understand exactly how that would work. I don't know what the resolution is and I don't know that the resolution being proposed is right. So if this resolution came up by itself in front of the council, I don't know that I would support it. But I am concerned about that issue and I just haven't had the chance to really think through that issue to see what the proper resolution of that would be. >> Troxclair: Mayor pro tem tovo. >> Tovo: So I'm prepared to make a motion and that is the board of adjustment should retain independent legal counsel during the

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deliberation process for interpretation cases and board of adjustment appeals. And that legal counsel shall have the opportunity to advise or go into executive session with the board of adjustment relating to that appeal. And just to clarify one of the comments -- what the mayor was -- one of the things that you said, mayor, that I want to clarify around is that it's my understanding that it would be in addition to not -- it would not replace your opportunity to hear from our city legal attorney as well. So as part of -- so that's my motion, but with the understanding that the board of adjustment would also be interacting with and hearing advice and counsel from the city attorney as well. If that's their interest. >> Troxclair: There's been a motion. Councilmember alter. >> Alter: I'll second that. >> Troxclair: Okay. I don't know. I guess there's been comments made about how this is a big issue. I haven't heard this concern from anybody, like not my commissioner, not anybody in my district. So I feel like I'm missing something that this is an issue in the community that I'm not aware of or that nobody has contacted me about. I don't know if it's a certain segment of the population that's concerned about it or if it's a political thing. I have no idea. But I'm really uncomfortable making a decision about this when we really don't know. I guess I would want to know the cost estimate first.

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And I -- okay. I'll let the mayor chime in. >> Mayor Adler: I would move to postpone this. And I would want to postpone this so that -- because I'm uncomfortable the one answer I suggest as I'm sitting here was intended more as a -- as an example of alternate resolutions or things that should be considered. I'd also like to see what happens in the discussion about the appeal process that's going on with the city right now to see if that would impact the answer to this question. So I would recommend that we postpone this so that we can get these questions answered and so that the discussions can happen between the board of adjustment and the legal department to see what kind of appeal process changes they make, including potentially a recommendation on this issue as part of that larger analysis. >> Councilmember troxclair, the point that I made to begin with was that whatever happens with a new land development code will be a much greater need for interpretations and appeals. It's not that we are inundated with appeals right now, in fact, we don't have that many, but it's a virtual certainty that that particular aspect of the load of board will increase dramatically when any new code comes into place. And I just think it's prudent and that's why we're here. >> Troxclair: Okay, thanks. Councilmember Flannigan. >> Can I make one final comment? >> Troxclair: Let's hear from councilmember Flannigan first. >> Flannigan: So I think it's probably a fair assertion that a new code and the breadth of change in a new code could increase the number of interpretations, but we don't know what that process is going to look like anymore. And to what extent changes are going to be dramatic. So there's a timing question to that point, I think. >> Troxclair: Well, I don't know. At this point we have no idea if or when there's

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going to be a new land development code. Yes, city clerk? Sorry, Ms. Goodall. >> Janet Goodall, city clerk. I would add that if you want to have direction to come back with a new process, I think you should

have direction to the city clerk because it involves my office, because I haven't had any discussion with the board of adjustment on what they -- what they want or expect my office to do. Expect my office to do. >> Mayor Adler: That's fine with me. Know until the conversation we just had, the action taken by the board of adjustment last night to take a longer look at this, that makes sense to me just because of what was presented to me yesterday seemed to have some unresolved issues in it. I would certainly hope they talk to legal and to the clerk as well or whatever else, but I would rather consider this as part of that overall analysis rather than as an isolated part. >> I think that makes sense. And I'll support your motion to postpone it. I'm open to seeing what other options might be out there, but I think it's a little premature to make a decision on this at this point. So yes, you were wanting to make a final comment. >> Yes. I'd like to clarify that they are really two separate issues. The issues about outside council has been percolating for a long time. The one about amending our bylaws is more recent and they're really unrelated. This is procedural how we go through our systems, how the cases filter through the system. The issue that we're talking about this morning is simply outside council. If I could give a real simple example, if there were a court case and there are two sides, and we'll say the city is the defendant and they're defending their position and the applicant

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is appealing that, and they each have attorneys and in most cases they do. The city has the city attorney and the outside appellant has their attorney. We go into executive session, we only go into executive session with one attorney from one side. We don't have both. So the imbalance what happens when with we go into executive session with the legal firm that's representing the city's position and that's where the imbalance happens. You've never had the same law firm rarely defending both sides of the case. So we're in executive session with one side and not with the other and that's what's leading us to this. >> Troxclair: All right. I guess there was a motion made and a second. Do y'all want to go ahead and take a vote on your motion. >> Mayor Adler: I'm going to vote yes on the portion to postpone and if the motion to postpone does not pass then I'm going to vote no. >> Troxclair: And they made their motion south first so -- I'm also going to support the motion to postpone and not support this motion. So I think we know what the vote is going to be, but if you want the opportunity to take that vote, then I'm going to give it to you. >> Tovo: As I recall Robert's rules, I think a postponement motion overrides another. >> Troxclair: Okay. Great. >> Tovo: But it's entirely up to you. >> Troxclair: Then we'll take a vote on the postponement. All those in favor of postponing this item please raise your hand? All right. The motion and myself vote in favor of postponement. All those opposed? Mayor pro tem tovo and councilmember alter vote against it. It doesn't pass. >> Mayor Adler: So now we're back to debate on the motion. >> Troxclair: You've already made a motion. Do you want to vote on it or

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are there any additional comments? >> Tovo: No. I think commissioner king referenced that this is -- and chair Burkhart did as well. This is a discussion that's been -- has taken place over a long period of time.

And I'd like to see that discussion at this point happen at the council. >> Troxclair: So there's been a motion and a second. All those in favor? Councilmember alter and mayor pro tem tovo in favor. All those opposed? The mayor and myself vote against it, so that also does not pass. >> Mayor Adler: I will say that I would be eager for this issue to come back to us in the context of that other conversation because I can't see how it may or may not relate to that until I see how the other conversation is handled. >> Troxclair: Mayor pro tem tovo. >> Tovo: Chair troxclair, I have another motion and that would be to forward the matter of independent legal counsel to the city council without recommendation. Much along the lines of what we did with the bylaws amendments for the CDC. >> Troxclair: I guess my only hesitation with that is I feel like there's -- well, I won't speak for the mayor, but for myself I feel like that there were some unanswered questions that we were interested in alternative proposals and I'm not sure forwarding that to council helps me get to a place where I can make a decision about this. I don't know. Do you have any thoughts? >> I would support this. Procedurally according to the people it would take four people to put it on the agenda. And I don't think I see the committee functioning in our system as a gatekeeper. I see it as really kind of a vetting element. And I think that we've identified the questions that we have and we've

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developed a record. If this were to come to council right now I would be urging the same thing. I would be making a motion to postpone on the same basis on the same grounds. So it's been kind of vetted at this point. I think that's really the function of this body. So I wouldn't stop it from coming to the council if there's support for it that I could see being a gatekeeper for there's no real support, but this one I think would. So I would let this one go. >> Troxclair: All right. So there was a motion and was there a second? >> Alter: Yep. >> Troxclair: Motion and a second. All those in favor of forwarding it to council with no recommendation? That passes unanimously. Yes. >> I would say that doesn't have to be for the 23rd. >> Mayor Adler: No, I would like more time for that. >> Troxclair: That is what I thought we were doing so that's why I had concerns. Thank you for that clarification. Mr. Lloyd? >> I briefly want to say in response to the mayor's comments about the appeals process, since I think this does -- it all to some degree interrelates. In 2011 or 2012 council initiated code amendments to comprehensively review and look at the appeals process. And it pertained not only to the boas role, but appeals are filed with lots of different bodies and lots of different procedural contexts. So it was to look holistically at all the different procedural requirements that applied to different sorts of appeals and to get clarity to deadlines and to how the process works. As I mentioned earlier there's a lot of ambiguity in our code. The difficulty in developing an ordinance ultimately resulted in it being folded into the codenext process. But now that council has put a pause or however you want to characterize it on that process, I believe that resolution is still live in

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code amendments. It's our intent next week to discuss some of the issues with the board members and also talk to the affected city departments about potentially putting together some amendments to take through the process in response to that resolution. >> Troxclair: Okay. Thank you. I appreciate all your time. That brings us to the last item on our agenda, and we are over time so we will try to be mindful of that. The fiscal year 2019 proposed draft audit plan, which identifies audit projects, the city auditors intends to conduct for the fiscal year. I want to -- I wanted to bring it up in case there were people who wanted to speak on it. I don't see anyone signed up, but from what I understand from the auditor we're not approving the plan today, just daylighting it for future approval. So I know that my office is -- if you want to go through your presentation, maybe you can, but seeing that we're losing people, I know that I've already met with you about the plan. I know that councilmember alter didn't have any changes to it. I don't have any changes to it right now, but if there's any issues or comments that the mayor or mayor pro tem [lapse in audio]

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>> Mayor Adler: Each one of the stages is to be able to take a look at the demographics, including, but not limited to race, respect to how we do that. And not to single you out. I think it's a request that I will making among other entities in the city making that request, hr departments, departments in the city manager's office as well. So that we have that data. >> And that is certainly something for our office that we can include in our report back to you that comes in September or October. That's our integrity unit report on investigation. So rather than do that as separate work, I think that can be incorporated into that report that reroutinely give you guys. >> Mayor Adler: If you could get us to the earlier part of that range, then the latter part of the range I think would be timely information for us to have. That said I'll hold my comments on the other pieces. Thank you. >> And just processwise, the way for the plan, we present here, this is kind of the first unveiling, like the daylighting of the audit plan, but certainly it's a work in progress and so as we get input from council offices and from others, we'll make adjustments to that plan and we'll bring back a version for recommendation to full council at the September meeting. >> Troxclair: Okay, great. And I'm happy to -- since there's not going to be a vote taken on this issue. I'm happy to sit here for a few more minutes if you want to run through your presentation just so that the public -- so that it's out in the public. >> Sure. >> Troxclair: And understanding that the other members of the committee might need to leave and we will adjourn the meeting as soon as she's finished with her proposal. >> All right. Well, it is -- I think I can do it in about 30 seconds. Should go quickly.

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Proof. So the first thing I've already mentioned, but city code requires that I bring the plan to this committee and that this committee then recommend the plan to the full council. So that's the first slide, which is just a review of the city code itself. We are proposing 15 audits. The lobbyist registration is on city code and on the city plan. But the remaining projects here are what we are proposing for this year. We -- basically we connect input from all of the council offices and try to refine this list. It started off as a

much longer list and we kind of get shorter and shorter as we try to get it down to the amount of work we think we can do, which is about 15 projects. There's also some additional projects. We keep that list in case something goes off the plan or we figure out that the timing is not great for something on the front page of the plan. Then we look to the second page of the plan for kind of replacement projects. So this is the -- sometimes we call it the horizon or just additional projects, replacement projects. This is just the timeline for coming back in September and then reporting out in -- or bringing it to full council for approval in October. That's it. >> Troxclair: Okay. Great. When you bring -- next time we hear this I would be interested to know of the things that are required by city code. Is that every year? And do you have a

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recommendation about whether or not those audits are necessary to be done? I certainly understand a lobby registration that's a new requirement, the interest in doing the audit this next year, but if that's indefinitely, I'm not sure that that needs to be an audit every single year. So I would be interested to know just your thoughts on the code required audits. >> Certainly. And that's the only one on the plan that's required by code. And we're doing the first one right now. And so I think after we complete that first one we may come back with a recommendation for does this need to be every year or should the code language be a little bit different to be auditing the right thing basically. We'll come back with that following that work. >> Mayor Adler: >> Troxclair: Thank you so much. Appreciate it. And we will adjourn this meeting of the Austin and finance committee at 11:57 and see y'all next month.