



October 29, 2020

## Questions and Answers Report



Mayor Steve Adler

Mayor Pro Tem Delia Garza, District 2

Council Member Natasha Harper-Madison, District 1

Council Member Sabino "Pio" Renteria, District 3

Council Member Gregorio Casar, District 4

Council Member Ann Kitchen, District 5

Council Member Jimmy Flannigan, District 6

Council Member Leslie Pool, District 7

Council Member Paige Ellis, District 8

Council Member Kathie Tovo, District 9

Council Member Alison Alter, District 10

*The City Council Questions and Answers Report was derived from a need to provide City Council Members an opportunity to solicit clarifying information from City Departments as it relates to requests for council action. After a City Council Regular Meeting agenda has been published, Council Members will have the opportunity to ask questions of departments via the City Manager's Agenda Office. This process continues until 5:00 p.m. the Tuesday before the Council meeting. The final report is distributed at noon to City Council the Wednesday before the council meeting.*

## QUESTIONS FROM COUNCIL

**Item #7:** Authorize negotiation and execution of a construction manager at risk agreement with Bartlett Cocke General Contractors, LLC for preconstruction and construction services for the Dougherty Arts Center Facility Replacement project in an amount not to exceed \$20,000,000. [Note: This contract will be awarded in compliance with City Code Chapter 2-9A (Minority Owned and Women Owned Business Enterprise Procurement Program) by meeting the goals 12.07% MBE and 5.62% WBE participation.]

### COUNCIL MEMBER HARPER-MADISON'S OFFICE

*Have either Bartlett Cocke or Flintco had been awarded past City contracts, and if so, for what projects?*

Both Bartlett Cocke General Contractors, Llc/Bartlett Cocke General Contractors and Flintco LLC have prior experience with the City of Austin.

Bartlett Cocke General Contractors, Llc / Bartlett Cocke General Contractors has been awarded the following City Contract(s):

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**Item #17:** Authorize negotiation and execution of an interlocal agreement with the Austin Independent School District for the Library Cards for All Students Program, which allows the Austin Public Library to offer a full purpose student library card to all students enrolled in the Austin Independent School District for the period from September 1, 2019 through August 31, 2021, with up to four additional 12-month terms.

### COUNCIL MEMBER FLANNIGAN'S OFFICE

*Has the City offered this opportunity to all school districts in the City of Austin for the 2021 school year? If so, which districts are participating?*

Yes, APL has offered the Library Cards for All Students Program to all school districts in the City of Austin for the 2021 school year. The districts participating in the program are AISD and DVISD.

**Item #20:** Authorize negotiation and execution of all documents and instruments necessary to acquire in fee simple 0.214 acres being a portion of Lots 12, 13, and 14, Block F of the Raymond Subdivision, a part of Outlot 2, Division Z, an addition in the City of Austin recorded in Volume 2, Page(s) 129 of the Plat Records of Travis County, Texas, located at 702 Wood Street, Austin, Texas and owned by Beau Soleil Austin, LLC, a Texas limited liability company, for a total purchase price not to exceed \$1,174,250, including closing costs.

#### COUNCIL MEMBER ELLIS' OFFICE

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The Parks and Recreation Department (PAR) has solicited input from neighborhood groups, conservancies, nonprofits, and council offices for properties that may be of interest for parkland. PAR regularly discusses with brokers and City real estate agents properties that may be available, as well. PAR has sent over 150 letters of interest to specific property owners identified using acquisition criteria, including but not limited to: greenbelt connections, park deficiency, demographic trends, and proximity to available parkland dedication funds. PAR and the Office of Real Estate Services (ORES) do not have an open, active solicitation program, since park acquisitions are targeted specifically toward meeting the above criteria. Otherwise, there would be a risk of inundation from solicitations that may not be serviceable as parkland. Occasionally, however, ORES agents will receive offers from private property owners that, if legitimate, may be circulated through various City departments for interest, including PAR. As such, PAR and ORES review acquisition proposals from the public for their ability to advance City goals. ORES also researches available listings that may meet PAR's criteria, which are then sent to PAR staff for review.

It should be noted that PAR can only offer up to third party appraised value, and cannot bid above that. As such, PAR works with willing sellers in an often competitive real estate market where other bids regularly exceed appraised value.

To learn more about the criteria for parkland acquisitions, and parkland dedication generally, please review this presentation: <http://www.austintexas.gov/atxparkland>.

#### **QUESTION/ANSWER:** Questions from October 13, 2020 Work Session

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The valuation was based on a third-party appraisal that utilized comparable land sales. The Real Estate Office can answer any remaining questions related to the evaluation.

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[See PLD StoryMap](#)

The parkland dedication fees that would fund this acquisition were collected specifically to purchase land. Said fees must be expended for the intent which they were required.

Acquisitions made with these fees must be proximate to the developments that generated them. The location of an acquisition using these fees must be ideally within a ½-mile radius, and if no acquisitions are available in that distance, the radius may increase to 2 miles. At minimum, an acquisition must be within the same park planning area.

The developments whose fees would pay for this acquisition are within the service area defined by City Code and the Parkland Dedication Operating Procedures. This acquisition is the most suitable park purchase in those developments' service area, approximately less than a mile from its location.

[City Code § 25-1-607 \(B\)\(1\)](#) specifies that: "Except as provided in Subsection (B)(3), the director shall use fees paid under Section 25-1-605 (Fee In-Lieu of Parkland Dedication) solely to acquire parkland or recreational easements that will benefit residents of the development for which the fees are assessed and are located within a service area designated by the director under the Parkland Dedication Operating Procedures." The exception is only if there is no land for purchase within the service area, which is not the case given this acquisition.

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This acquisition meets all three: it is an equitable purchase for the high-density downtown area, and furthers the preservation of a historic site that has been neglected until recently due to systemic racism. While it doesn't remove the surrounding area from park deficiency (since it is already within walking distance of Shoal Creek GB here), it does increase park access, as there is not currently adequate trailhead facilities on the existing parkland (nor would they be feasible). The Long Range Plan specifies to work with our partners to further their vision; the Shoal Creek Conservancy is one of those partners, and their vision for Shoal Creek specifically mentions this property as part of a recommendation. The partnership can be leveraged to develop this space.

*Vacation of Wood Street and whether that could be done without the purchase of the land.*

In order to vacate a ROW, property owners on both sides of the ROW must agree to vacate. PARD could not partially vacate Wood Street without purchasing 702 Wood Street. Purchasing 702 Wood Street improves and preserves access to Shoal Creek, and would maintain the need for Wood Street to remain as right-of-way for said access. 702 Wood Street would allow the City to expand its acquisition with a partial ROW vacation for the unpaved portion of the street-end, where it would be parkland on both sides. The loss of 702 Wood Street may complicate the use of this street, and lose the potential to dedicate some additional ROW as parkland at that location.

*How does the purchase of this property satisfy the PARD priorities?*

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Conservancy is one of those partners, and their vision for Shoal Creek specifically mentions this property as part of a recommendation.

*Is this purchase consistent with past Parkland dedication purchases? Can PARD show similar acquisitions land near a trail?*

Improving and expanding park access by purchasing adjacent lots or tracts is part of our best practices. PARD has purchased properties for this purpose most recently for Williamson Creek Greenbelt, Walnut Creek Greenbelt, Bull Creek Greenbelt, and Country Club Creek Greenbelt. Purchases have been consistent with the Long Range Plan's Planning Areas' specific recommendations for expanding and improving greenbelt access. These purchases should further the goals of the Long Range Plan according to City Code 25-1-603 and the Parkland Dedication Operating Procedures. City Code 25-1-603 also outlines that parkland purchases should improve park access.

*If funding can be spent between 1/2 mile and 2 miles of the development, why has PARD not considered acquisition or improvements east of I-35? (Specifically why not spend in District 1 or District 3)*

Fees collected in the downtown and west campus area must be spent close to where they were collected. In this instance, Wood Street would be a closer acquisition than some of the anticipated park acquisitions east of IH-35. Fees collected in Districts east of IH-35 shall be spent on acquisitions near their source. Future acquisitions in these Districts are forthcoming. There are currently 13 active park acquisitions being negotiated east of IH-35, amounting to approximately 147 acres; parkland dedication funding shall be used where applicable in purchasing these properties.

*In other parts of town the road just exists or dead ends (Bull Creek) And folks park and access the trail from the street- why do we need additional space if there is already a marker that celebrates the historical significance? The trail can already be accessed. (My initial thoughts are we are missing the ADA accessibility and Bull Creek is not ideal as we receive concerns about traffic illegal parking. I am sure you can expand.)*

Given the site was worthy of a Texas Historical Commission marker, PARD therefore finds it to be worthy of preservation. The marker does not allow for any use or programming of the site, it simply acknowledges its importance. Use of the site would allow for events and storytelling opportunities similar to other historical sites along Shoal Creek, such as Seiders Springs and Pease Park. Events such as Austin Design Week and Shoal Creek history tours have already highlighted or used the site; ownership would allow a greater opportunity for programming, interpretation, and celebration of African American and Hispanic American history in Austin. It would preserve the site from being lost to private interests. It also improves access to the Shoal Creek Greenbelt, itself a historic trail and the first greenbelt in Austin (since 1927).

Currently, there is no accessible access to Shoal Creek at this location. The existing staircase is not ADA accessible, nor is it on City parkland, and the dirt path closer to the 6<sup>th</sup> Street bridge leads off of City parkland. The 5<sup>th</sup> to 15<sup>th</sup> Street Preliminary Engineering Report and the Shoal Creek Trail Vision Plan calls for expanding the trail at this location, which may take up the existing dirt path. The Wood Street property would therefore allow better ADA access to the trail at this location without compromising other planning efforts. Shoal Creek Trail is also an urban trail for all ages and abilities, which means providing sufficient access to all trail users.

*Please provide the amounts of funding associated with this fund. How much money do we have in PLD.*

[See PLD StoryMap.](#)

LAST 5 YEARS	Available	Completed	Planned/Assigned
Development Fees	\$3,732,317.74	\$769,369.27	\$4,549,256.08
Fee in-lieu Land	\$7,597,888.25	\$1,303,248.89	\$11,258,757.77
Fee in-lieu Land FY21	\$7,989,892.67		
Old Fee in-lieu and Title 30	\$889,963.09	\$1,686,711.33	\$2,926,891.00
	<b>\$20,210,061.75</b>	<b>\$3,759,329.49</b>	<b>\$18,734,904.85</b>

*If we can leverage partnership funding to help with programming and development- What is the cost estimate for the ADA accessibility? What is the estimated cost of interpretive signage? What is the cost to develop and implement a historical walking tour?*

Estimated cost to be determined following design stage. Rough planning estimates suggest \$500,000 required for improvements. Shoal Creek Conservancy is a partner in realizing the vision for this property.

*What else could PARD spend the PLD funds on instead of this acquisition? (It will be important to emphasize the outlined procedures of land purchase first priority to amenity investment at existing spaces.)*

[See PLD StoryMap](#)

There are currently no other acquisitions that fulfill the locational criteria as closely as 702 Wood Street for the developments' fees identified to contribute to its purchase. If Wood Street were not being recommended for Council, PARD would explore other potential acquisitions within a 2 mile radius, and if none exist, within the park planning area. However, City Code requires that if acquisitions are nearby, that the fees be used toward that acquisition; such is the case with Wood Street.

Please see the PLD expenditures webpage: <http://austintexas.gov/page/parkland-dedication-expenditures>

PLD expenditures map:

<https://austin.maps.arcgis.com/apps/webappviewer/index.html?id=ebcf27f09c704e78843b71f7b0361b1c>

*Shoal Creek Greenbelt Trail (slope failure and trail repair funding)*

The Watershed Protection Department (WPD) just completed the second of their projects in response to the landslide, stabilizing the streambank of Shoal Creek. PARD has been coordinating with WPD the work on the Shoal Creek trail, and earlier this year, PARD reached out to the Budget office to secure funding for the repairs. As a result, **in the FY21 Budget, PARD had \$1 million appropriated to CIP in emergency certificates of obligation to address the trail in the Shoal Creek landslide area. This was included in the City Manager's Proposed Budget after the request was approved by Budget Office leadership.** The design isn't entirely defined, yet, but the most likely option after discussions with stakeholders in the spring of 2020 was adding a nature trail on the east side of the creek between it and North Lamar (phase 1) and widening the existing concrete sidewalk (potentially with ATD's assistance) in phase 2. PARD has assigned a project manager to this project.

Specifically, PARD has been working with Public Works, Austin Transportation, Shoal Creek Conservancy and Pease Park Conservancy to determine the next steps for the improvements to the current trail detour and the sidewalk along Lamar Blvd. that would most benefit the public and park use. The proposed first phase will improve and formalize the existing nature trail and connect to the closest creek crossing. Due to COVID-19 delays, this work is anticipated to begin in the spring of 2021. PARD is also working on a design to widen and improve a portion of the Lamar sidewalk to accommodate multiple users and active transportation modes.

The contractor we intend to use for the nature trail, Youthworks, is not available until February because many of their projects that were put on hold due to the pandemic, are now back in progress.

Project website: <https://www.austintexas.gov/department/shoal-creek-slope-failure>

#### *Explore Hotel Occupancy Tax (HOT) funding for Evergreen Cemetery*

PARD will review this funding option to determine whether the criteria could be met for HOT funding at Evergreen Cemetery. The base criteria under consideration is as follows:

- a. Every expenditure must directly enhance and promote tourism and the convention and hotel industry.
- b. This may pose a challenge for Evergreen cemetery because PARD does not have any numbers to prove that the cemetery is likely to enhance tourism and the convention/hotel industry in Austin, in order to justify HOT funding allocation.
- c. Funding to be used for historical restoration and preservation projects.
- d. Evergreen is a historic cemetery, so this criterion is reasonably met however, there needs to be consideration as to whether lighting, cameras and other security measures are considered "restoration"

A challenge for the next few years may be that HOT funding will be very limited. PARD has already established goals/programs to direct HOT to CIP projects already underway (previously vetted) that clearly meet the HOT criteria tied to tourism/historical preservation.

It is important to note, through historic designations, historical marker, an audio tour (in partnership with Save Austin's Cemeteries), PARD is working to better promote Evergreen to visitors to Austin. However, the visitation may not establish the cemetery's tourist component just yet.

*Memo referenced by CM Tovo during the October 13, 2020 work session:*

<http://www.austintexas.gov/edims/pio/document.cfm?id=346957>

*The development properties associated with the parkland dedication used toward the 702 Wood St acquisition are as follows:*

- Villas on Nueces, 2207 Nueces Street
- Moxy Hotel, 2552 Guadalupe Street
- Standard at Austin, 2225 Pearl Street
- Hilltop, 2400 San Gabriel Street
- Avena Tower, 2515 San Gabriel Street

- 91 Red River, 91 Red River
- Villas on Rio Grande. 2111 Rio Grande Street
- Canopy by Hilton, 612 West 6th Street

These developments are all located in either the downtown or west campus area, within at least a mile of the acquisition.

*Basic information related to the PLD Ordinance*

Parkland dedication fees are to be spent to acquire new parkland near the developments that generated the additional need, with locational criteria in city code. This ensures that the new residents or visitors are adequately served by the parks system via its expansion. Legally, the locational criteria is to comply with case law from City of College Station v. Turtle Rock Corporation (1984), which required that parkland dedication have “a reasonable connection between the increased population [...]and increased park and recreation needs in the neighborhood.” In Turtle Rock, the Texas Supreme Court referred to a previous case where Missouri City’s parkland dedication ordinance was found unconstitutional because a development’s fee in lieu could be “expended on parks anywhere in the city rather than only at a park close to that subdivision” (Crompton, 2010).

The City of Austin’s locational criteria establishes a reasonable connection between a development and the expenditure of the fee. Purchasing parkland closer to the developments that had paid fees in lieu for new parkland adheres to the constitutionality of serving the neighborhoods with increased demand on the parks system. Generally, this acquisition will serve the downtown and west campus communities (as well as the City as a whole) with new parkland of recreational, historic, educational, and environmental value.

**Nexus Principle:** The principle relates to the establishment of an “essential connection” between the demand generated by a development and the park or park improvement being constructed with the resources provided by the developer. Land or fees must be used to benefit those who will live in the development. The funds, then, shall be spent on new or expanded recreational facilities and may not be used for maintenance or repair.

**Limitations on expending fees:** A reasonable time frame for fund expenditure must be stated. The Austin ordinance states that the fees must be expended within five years from the date they were received, unless less than 50% of the residential units in the subdivision have been constructed. In that case, the period for expenditure is extended another five years. If the city has not expended the fees, a refund may be requested in writing for any units not constructed not later than 180 days after the expiration of the five years, or 10 years, as applicable.

**Parkland Dedication Operating Procedures:** A fee in-lieu of dedication collected under City Code § 25-1-605 must be used within the service area where it was assessed and should be used to address the following priorities:

- (1) PARD will attempt to acquire land or easements that meets the standards in City Code § 25-1-603 (Standards for Dedicated Parkland) and is located within a ½ mile radius if the development is located within a Parkland Deficient Area or if the land would serve a critical parkland need or provide increased connectivity.
- (2) If no land that meets the requirements for dedicated parkland is available for acquisition within a Parkland Deficient Area, PARD may use funds to acquire parkland or easements within a two-mile radius.

- (3) If no additional land that meets the requirements for dedicated parkland is available for acquisition within a two-mile radius, PARC may use funds to acquire parkland at any location within the Parkland Service Area that will benefit the development for which the fees were assessed.
- (4) If no land that meets the standards in Paragraphs (B)(1)-(3), above, is available for acquisition within one year from the date that a fee in-lieu of dedication was paid, PARC may spend the fees to construct recreational amenities or improvements at an existing park within the applicable Parkland Service Area.

**Item #28:** Approve the Joint Inclusion Committee bylaws.

COUNCIL MEMBER HARPER-MADISON'S OFFICE

1. *In reviewing the materials for item 28 (Approve the Joint Inclusion Committee bylaws) our office noted that there is no stipulation in Article 4 that officers be selected from the committee's membership.*

This item is presented in response to the recently passed Ordinance 20200827-013 - <https://www.austintexas.gov/edims/document.cfm?id=347368>. Please see our additional responses below.

Ordinance 20200827-013 established the JIC membership and in (C) states that the JIC representative be a member of the boards listed in (A). This is reinforced in the JIC bylaws, Article 3. Members (A). Article 4 of the JIC bylaws establishes the duties of the officers.

2. *Were an officer elected from outside the committee, the stipulations from Article 3 including those about conflicts of interest would not bind that officer.*

Ordinance 20200827-013 (C) establishes the JIC be representative of a member from each of the boards listed in (A) as well as in the JIC bylaws Article A.

3. *Further, an outside chair would be granted voting rights by clause (I) in Article 7.*

No, once the JIC is established officers shall be elected, then follow the JIC bylaws Article 4. Officers (B) thereafter.

4. *Does the committee intend to select its officers from the members of its body?*

Ordinance 20200827-013 2-1-204 (C) states that each board listed in subsection (A) of the ordinance (Article 3. Membership of the JIC bylaws) should select one of its members to serve on the JIC committee. Additionally, a second member shall be designated to serve in case the appointed member is unable to attend.



**Council Question and Answer**

<b>Related To</b>	Item #7	<b>Meeting Date</b>	October 29, 2020
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Additional Answer Information

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**QUESTION/ANSWER:** Council Member Harper-Madison’s Office

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**Council Question and Answer**

<b>Related To</b>	Item #17	<b>Meeting Date</b>	October 29, 2020
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*If funding can be spent between 1/2 mile and 2 miles of the development, why has PARD not considered acquisition or improvements east of I-35? (Specifically why not spend in District 1 or District 3)*

Fees collected in the downtown and west campus area must be spent close to where they were collected. In this instance, Wood Street would be a closer acquisition than some of the anticipated park acquisitions east of IH-35. Fees collected in Districts east of IH-35 shall be spent on acquisitions near their source. Future acquisitions in these Districts are forthcoming. There are currently 13 active park acquisitions being negotiated east of IH-35, amounting to approximately 147 acres; parkland dedication funding shall be used where applicable in purchasing these properties.

*In other parts of town the road just exists or dead ends (Bull Creek) And folks park and access the trail from the street- why do we need additional space if there is already a marker that celebrates the historical significance? The trail can already be accessed. (My initial thoughts are we are missing the ADA accessibility and Bull Creek is not ideal as we receive concerns about traffic illegal parking. I am sure you can expand.)*

Given the site was worthy of a Texas Historical Commission marker, PARD therefore finds it to be worthy of preservation. The marker does not allow for any use or programming of the site, it simply acknowledges its importance. Use of the site would allow for events and storytelling opportunities similar to other historical sites along Shoal Creek, such as Seiders Springs and Pease Park. Events such as Austin Design Week and Shoal Creek history tours have already highlighted or used the site; ownership would allow a greater opportunity for programming, interpretation, and celebration of African American and Hispanic American history in Austin. It would preserve the site from being lost to private interests. It also improves access to the Shoal Creek Greenbelt, itself a historic trail and the first greenbelt in Austin (since 1927).

Currently, there is no accessible access to Shoal Creek at this location. The existing staircase is not ADA accessible, nor is it on City parkland, and the dirt path closer to the 6<sup>th</sup> Street bridge leads off of City parkland. The 5<sup>th</sup> to 15<sup>th</sup> Street Preliminary Engineering Report and the Shoal Creek Trail Vision Plan calls for expanding the trail at this location, which may take up the existing dirt path. The Wood Street property would therefore allow better ADA access to the trail at this location without compromising other planning efforts. Shoal Creek Trail is also an urban trail for all ages and abilities, which means providing sufficient access to all trail users.

*Please provide the amounts of funding associated with this fund. How much money do we have in PLD.*

[See PLD StoryMap.](#)

LAST 5 YEARS	Available	Completed	Planned/Assigned
<b>Development Fees</b>	\$3,732,317.74	\$769,369.27	\$4,549,256.08
<b>Fee in-lieu Land</b>	\$7,597,888.25	\$1,303,248.89	\$11,258,757.77
<b>Fee in-lieu Land FY21</b>	\$7,989,892.67		
<b>Old Fee in-lieu and Title 30</b>	\$889,963.09	\$1,686,711.33	\$2,926,891.00
	<b>\$20,210,061.75</b>	<b>\$3,759,329.49</b>	<b>\$18,734,904.85</b>

*If we can leverage partnership funding to help with programming and development- What is the cost estimate for the ADA accessibility? What is the estimated cost of interpretive signage? What is the cost to develop and implement a historical walking tour?*

Estimated cost to be determined following design stage. Rough planning estimates suggest \$500,000 required for improvements. Shoal Creek Conservancy is a partner in realizing the vision for this property.

*What else could PARD spend the PLD funds on instead of this acquisition? (It will be important to emphasize the outlined procedures of land purchase first priority to amenity investment at existing spaces.)*

[See PLD StoryMap](#)

There are currently no other acquisitions that fulfill the locational criteria as closely as 702 Wood Street for the developments' fees identified to contribute to its purchase. If Wood Street were not being recommended for Council, PARD would explore other potential acquisitions within a 2 mile radius, and if none exist, within the park planning area. However, City Code requires that if acquisitions are nearby, that the fees be used toward that acquisition; such is the case with Wood Street.

Please see the PLD expenditures webpage: <http://austintexas.gov/page/parkland-dedication-expenditures>

PLD expenditures map:

<https://austin.maps.arcgis.com/apps/webappviewer/index.html?id=ebcf27f09c704e78843b71f7b0361b1c>

#### *Shoal Creek Greenbelt Trail (slope failure and trail repair funding)*

The Watershed Protection Department (WPD) just completed the second of their projects in response to the landslide, stabilizing the streambank of Shoal Creek. PARD has been coordinating with WPD the work on the Shoal Creek trail, and earlier this year, PARD reached out to the Budget office to secure funding for the repairs. As a result, **in the FY21 Budget, PARD had \$1 million appropriated to CIP in emergency certificates of obligation to address the trail in the Shoal Creek landslide area. This was included in the City Manager's Proposed Budget after the request was approved by Budget Office leadership.** The design isn't entirely defined, yet, but the most likely option after discussions with stakeholders in the spring of 2020 was adding a nature trail on the east side of the creek between it and North Lamar (phase 1) and widening the existing concrete sidewalk (potentially with ATD's assistance) in phase 2. PARD has assigned a project manager to this project.

Specifically, PARD has been working with Public Works, Austin Transportation, Shoal Creek Conservancy and Pease Park Conservancy to determine the next steps for the improvements to the current trail detour and the sidewalk along Lamar Blvd. that would most benefit the public and park use. The proposed first phase will improve and formalize the existing nature trail and connect to the closest creek crossing. Due to COVID-19 delays, this work is anticipated to begin in the spring of 2021. PARD is also working on a design to widen and improve a portion of the Lamar sidewalk to accommodate multiple users and active transportation modes.

The contractor we intend to use for the nature trail, Youthworks, is not available until February because many of their projects that were put on hold due to the pandemic, are now back in progress.

Project website: <https://www.austintexas.gov/department/shoal-creek-slope-failure>

#### *Explore Hotel Occupancy Tax (HOT) funding for Evergreen Cemetery*

PARD will review this funding option to determine whether the criteria could be met for HOT funding at Evergreen Cemetery. The base criteria under consideration is as follows:

- a. Every expenditure must directly enhance and promote tourism and the convention and hotel industry.
- b. This may pose a challenge for Evergreen cemetery because PARD does not have any numbers to prove that the cemetery is likely to enhance tourism and the convention/hotel industry in Austin, in order to justify HOT funding allocation.
- c. Funding to be used for historical restoration and preservation projects.
- d. Evergreen is a historic cemetery, so this criterion is reasonably met however, there needs to be consideration as to whether lighting, cameras and other security measures are considered "restoration"

A challenge for the next few years may be that HOT funding will be very limited. PARD has already established goals/programs to direct HOT to CIP projects already underway (previously vetted) that clearly meet the HOT

criteria tied to tourism/historical preservation.

It is important to note, through historic designations, historical marker, an audio tour (in partnership with Save Austin's Cemeteries), PARD is working to better promote Evergreen to visitors to Austin. However, the visitation may not establish the cemetery's tourist component just yet.

*Memo referenced by CM Tovo during the October 13, 2020 work session:*  
<http://www.austintexas.gov/edims/pio/document.cfm?id=346957>

*The development properties associated with the parkland dedication used toward the 702 Wood St acquisition are as follows:*

- Villas on Nueces, 2207 Nueces Street
- Moxy Hotel, 2552 Guadalupe Street
- Standard at Austin, 2225 Pearl Street
- Hilltop, 2400 San Gabriel Street
- Avena Tower, 2515 San Gabriel Street
- 91 Red River, 91 Red River
- Villas on Rio Grande. 2111 Rio Grande Street
- Canopy by Hilton, 612 West 6th Street

These developments are all located in either the downtown or west campus area, within at least a mile of the acquisition.

#### *Basic information related to the PLD Ordinance*

Parkland dedication fees are to be spent to acquire new parkland near the developments that generated the additional need, with locational criteria in city code. This ensures that the new residents or visitors are adequately served by the parks system via its expansion. Legally, the locational criteria is to comply with case law from *City of College Station v. Turtle Rock Corporation* (1984), which required that parkland dedication have “a reasonable connection between the increased population [...]and increased park and recreation needs in the neighborhood.” In *Turtle Rock*, the Texas Supreme Court referred to a previous case where Missouri City's parkland dedication ordinance was found unconstitutional because a development's fee in lieu could be “expended on parks anywhere in the city rather than only at a park close to that subdivision” (Crompton, 2010).

The City of Austin's locational criteria establishes a reasonable connection between a development and the expenditure of the fee. Purchasing parkland closer to the developments that had paid fees in lieu for new parkland adheres to the constitutionality of serving the neighborhoods with increased demand on the parks system. Generally, this acquisition will serve the downtown and west campus communities (as well as the City as a whole) with new parkland of recreational, historic, educational, and environmental value.

**Nexus Principle:** The principle relates to the establishment of an “essential connection” between the demand generated by a development and the park or park improvement being constructed with the resources provided by the developer. Land or fees must be used to benefit those who will live in the development. The funds, then, shall be spent on new or expanded recreational facilities and may not be used for maintenance or repair.

**Limitations on expending fees:** A reasonable time frame for fund expenditure must be stated. The Austin ordinance states that the fees must be expended within five years from the date they were received, unless less than 50% of the residential units in the subdivision have been constructed. In that case, the period for expenditure is extended another five years. If the city has not expended the fees, a refund may be requested in writing for any units not constructed not later than 180 days after the expiration of the five years, or 10 years, as applicable.

**Parkland Dedication Operating Procedures:** A fee in-lieu of dedication collected under City Code § 25-1-605 must be used within the service area where it was assessed and should be used to address the following priorities:

- (1) PARD will attempt to acquire land or easements that meets the standards in City Code § 25-1-603 (Standards for Dedicated Parkland) and is located within a ½ mile radius if the development is located within a Parkland Deficient Area or if the land would serve a critical parkland need or provide increased connectivity.
- (2) If no land that meets the requirements for dedicated parkland is available for acquisition within a Parkland Deficient Area, PARD may use funds to acquire parkland or easements within a two-mile radius.
- (3) If no additional land that meets the requirements for dedicated parkland is available for acquisition within a two-mile radius, PARD may use funds to acquire parkland at any location within the Parkland Service Area that will benefit the development for which the fees were assessed.
- (4) If no land that meets the standards in Paragraphs (B)(1)-(3), above, is available for acquisition within one year from the date that a fee in-lieu of dedication was paid, PARD may spend the fees to construct recreational amenities or improvements at an existing park within the applicable Parkland Service Area.



**Council Question and Answer**

<b>Related To</b>	Item #28	<b>Meeting Date</b>	October 29, 2020
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Additional Answer Information

Approve the Joint Inclusion Committee bylaws.

**QUESTION/ANSWER:** Council Member Harper Madison’s Office

- In reviewing the materials for item 28 (Approve the Joint Inclusion Committee bylaws) our office noted that there is no stipulation in Article 4 that officers be selected from the committee's membership.*

This item is presented in response to the recently passed Ordinance 20200827-013 - <https://www.austintexas.gov/edims/document.cfm?id=347368>. Please see our additional responses below.

Ordinance 20200827-013 established the JIC membership and in (C) states that the JIC representative be a member of the boards listed in (A). This is reinforced in the JIC bylaws, Article 3. Members (A). Article 4 of the JIC bylaws establishes the duties of the officers.

- Were an officer elected from outside the committee, the stipulations from Article 3 including those about conflicts of interest would not bind that officer.*

Ordinance 20200827-013 (C) establishes the JIC be representative of a member from each of the boards listed in (A) as well as in the JIC bylaws Article A.

- Further, an outside chair would be granted voting rights by clause (I) in Article 7.*

No, once the JIC is established officers shall be elected, then follow the JIC bylaws Article 4. Officers (B) thereafter.

- Does the committee intend to select its officers from the members of its body?*

Ordinance 20200827-013 2-1-204 (C) states that each board listed in subsection (A) of the ordinance (Article 3. Membership of the JIC bylaws) should select one of its members to serve on the JIC committee. Additionally, a second member shall be designated to serve in case the appointed member is unable to attend.