

Special Called City Council Meeting Transcript – 10/29/2020

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-- today is Thursday, October 29, 2020, and this is the continuation of the Austin city council meeting, begun this morning. One item left. It is item 31. I am also going to convene the special called meeting set for Thursday October 29, 2020. This called meeting to convene no earlier than 6:00 and we are convening this virtually and running concurrently with the regularly scheduled council meeting. We have a quorum present. And before us is the figuring out how best to have Austin energy, help Austin energy move forward with the substation to be constructed on the site.

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My sense is that we are all joined in the effort to get the Austin energy out there just as quickly as possible. I think we all understand the urgency of this project and getting the project done. Looking at what was set in front of us I was concerned some councilmembers did not want to approve a use change with a text change, meaning that property owners within 500 feet were not noticed and given the appeal rights for a use change. If you personally think you can do that but obviously we have a case now up in Austin that may or may not rule on that

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question. But anyway, it was seeing that and recognizing how important and urgent it was for Austin energy to move forward that put it on the special called meeting an alternate path, which would have a council initiate P zoning, go down a planning commission. I think what legal is recommending is that if we took that route we should take item 31 and postpone it indefinitely rather than either saying no or

just out of -- postpone it indefinitely so that had it hanging out there and could be brought back to the council for whatever reason we needed to do that. By taking it down it would be treated like a zoning case for a change of use on that property. It would be clear notice and process that isn't under any debate and is not subject to being challenged or delayed or held up. It just seemed like that might represent the path with the

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least amount of risk. >> I think that if we did that and in conversation with Jackie and give you a chance to talk to her in a second, Jackie can answer the questions that council might have. I think it is important that if we follow this path that we follow it with kind of the understanding to the planning commission that they should, you know, work tout trail aspect that I understand that Jackie says is something that will be worked out at that level but to make sure that it just comes back clean with just that, so it is not held up with other kind of issues right now, like affordable housing, or other kinds of issues that, if that is an issue and if there is space we can deal with that kind of thing in the future but get it down and get it back to us as

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rapidly as possible. Jackie, do you want to speak to any of these issues or what is before us? >> Sure. I can do that, mayor and councilmembers, I am Jackie sergeant, manager of Austin energy, we brought forward item 31 because we felt that that was the clearest path .. For moving this project and advancing it, we understand the issues that are being brought forward and in our consultation with our legal team we believe that advancing both items would be in our best interests and that would allow us to submit a complete site plan, and Mitts situate can address that, mitzy can address that. And with that said -- I apologize. My dog is chiming in for some reason. While, you know, we want to proceed down this other path -- we will do our best to meet the

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deadlines through that process and I can't say for sure how that process -- >> Jackie your dog just got my dog going so I am going mute myself, because I am going to tell my dog, that your dog is not in fact talking to my dog. So -- >> I apologize for that. I closed the door. I probably should have just left it open and let him come in. Just a minute. I am going to do that. Jackie sergeant the dog didn't see the 0 no whining fine? The back, exactly that is actually for my granddaughters, that is the rules at Natasha harper-madison's house, don't get hurt and no whining. But I want to commit to you that my team and I see that Susan

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gross that joined us has already reached out to the red line trail. We are in support of trails. We are looking at the best alternatives to accommodate a trail on the site. There are other requirements that we have at the site and there are other easements and so before we can fully commit to a specific path for that trail, we have to work through those issues, but we are ready and we are willing to roll up our sleeves and to make that happen, because we appreciate the efforts for mobility that this council and this community have been striving to bring forward. So I don't see the, so I don't see the trail as an issue. We are committed to it. My team is committed to it and I have instructed them that that is something we need to make happen. We are concerned about the uncertainty with moving forward can with the P zoning process

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and we cannot -- I cannot stress enough we cannot have anymore delays for this project. The need that we have to maintain reliable service, the commitments we have to some of our specific customers and the need or that capacity so that we don't have people coming forward for service and we have to say, I am sorry, but we can't serve you. So this is very critical. It is of the utmost forms and we need a path forward. Whatever that path is, our team is committed to working together to make it happen with your support. >> Mayor Adler: Thank you. Alex. >> Mayor pro tem. >> I just want to make sure --

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the recommendation from Jackie was to pass both 31 and this special -- and this item? >> Yes? Okay. Thanks. >> And mayor, if I may, I don't know if you see me. >> Mayor Adler: I can, yes. >> So I would like, if Jackie might be able to speak to what the hesitation was around the item in which case I think ultimately I am trying to make sure that general public understands what it is that we are presenting. >> I apologize, councilmember, I am not sure I understand what your specific question is. >> So we are asking the general public to engage in, you know, after a long day of council deliberation, we are asking to additionally be a part of this

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particular meeting in which case can we be real clear about what it is the item that is before us and why we are deliberating it. >> So in order for us to construct and put into operation a needed substation, we

have to have a text change to the code to allow us to proceed and to be able to construct that. The other part is the change in zoning and Jerry rest Hoven can speak more specifically to the text change and the requirements that are there because of the north burnet/gateway regulating plan and the current use that we have of this site under tod zoning. Our attorney mitzy cotton can

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speak to the desire to move forward approving both items .. >> Harper-madison: I think to explain exactly what we are up against and I don't think Jerry or Mitzi or anybody else has to -- I just want to make sure, you know, as we proceed with these deliberations that people understand exactly what it is we are doing, but I think you already responded to that, thank you very much. I appreciate your time. >> And I would move to postpone epiindefinitely item number 31 subject to call and to pass item number 1 in the special called meeting with direction that -- to the greatest extent possible that get back to us as clean as it can, having worked out the trail issue, notice of the case, as we notice zoning cases to the

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owners within [indiscernible] They have the opportunity to have whatever appeal rights and also noting any text changes that would be required to affect the purpose. That would be my motion. >> Is there a second to that motion? Councilmember Ellis seconds. Any discussion? Councilmember kitchen. >> Kitchen: I just wanted to ask Jackie again, so I think we just confirmed that your thinking was that it would be best to go with both of them. Is that because that would give you the most flexibility to move forward on them? Is that the thinking or can you just speak to that again? >> Well, in consultation with our attorneys, it is our understanding that, in that

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scenario we would be able to move forward request submitting any complete site plan as opposed to trying to carve out just a specific area, but right now we are trying to figure out the best location so that we can accommodate the trail and that need as well, along with addressing all of the necessary water features and drainage issues with the property. >> Okay. Thank you. So I would like to vote on -- if I hear your motion correctly I think you were putting the two things together in your motion? I would like to separate them. >> Mayor Adler: If you wanted to, you could amend the motion to say that you want to make the use change now without having giving people the appeal right. >> Kitchen: Mayor I would like to vote yes on both of them and

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so that is what I am wanting to do and so that is why I am thinking that all we need to do is just separate out your motion. I am not intending to amend your motion such that we wouldn't be voting on the item that is in front of us. >> Mayor Adler: I am fine doing that. >> Kitchen: I am sorry what did you say? >> Mayor Adler: I am fine. The first motion is to approve item number one that is in the special called meeting. It has been moved and seconded. Any discussion? Councilmember pool. >> Pool: So what does that do with item 31 under the councilmember kitchen's -- what is the second part? >> Mayor Adler: -- We are going to divide that and we will have a vote on the 31 after we have the vote -- >> Pool: Because I am prepared to make a motion to -- because I think that gives the maximum flexibility as I think was appropriate to the staff, specifically -- energy in order

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to move forward as expeditiously and with the most certainty, which is important in this case to this -- I am sorry. Is somebody talking while I am. >> Mayor Adler: I was going to say, so -- >> Pool: Are you short-circuiting my comments, mayor? [Laughter] >> Mayor Adler: No, I am trying to make sure that it is clear what is in front of us. So I had suggested one motion that had us handling item number 31 and number 1 at the same time. Councilmember kitchen in essence asked to divide the question and have a separate vote on each. >> Pool: And that's what I was trying to ascertain because I think what the city staff is a is to approve both 31 and 1. >> Mayor Adler: That is correct. So I said we would do that, and the first vote is on number one in the special, and then we will handle the vote on number 31 in the regular called meeting. And then what I heard you say is

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that you explained why you thought 31 which should pass. I promise to give you the opportunity to do. But we will consider that in just a second. We are going consider them both, as I told Ann we would do. Okay? >> Pool: So I think actually the Robert rules call would be to take out -- to take up item 31 first but I recognize that there is a thumb on the scale. I do want to say I support the city staff in what they are asking for because I realize the importance of the ability to move quickly on this particular situation. I clearly have identified that I support both of these. This is not my fight. I mean, I have supported Austin energy moving forward with this case since may when they first brawl it to us, and I have signaled that pretty clearly that we don't go wrong by following the city staff's lead

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in this specific instance. Thank you. >> Mayor Adler: I am trying to decide whether or not to address the debate about having a thumb on the scale or the suggestion that what we are doing here is inappropriate under Roberts rules. I am not going to do that. The item in front of discuss number one on the special called meeting. Any discussion? Councilmember alter? >> Alter: I think we are all trying to get to the same place or trying to get the substation built and do it in an appropriate way and get it done fast. I am wondering if staff could say, if it would be appropriate for us to provide any guard rails for this process or the timing, you know, I have heard wildly different estimates of how long it would take to move through process, which I think

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is the real concern here, so I am wondering if staff could speak to how long they think that the process would take to be able to get the substation up and running and if they could also -- not up and running but how long it would take to get the zoning case back to us and then if there are any additional direction that would be helpful to make sure that this zoning case is posed on getting the substation and doesn't get derailed in some other fashion, you know, it is a lot of dangers of a substation and having things too close to it. So I just want to make sure that we can move as quickly as possible, so if Terry could provide that information I would appreciate it. >> Councilmember, the resolution on this item does direct the city manager to have an expedited case to not cause

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delay so we have that direction in the resolution but with regard to how long it would take I can't give you an exact number. I can tell you that the resolution directs us to rezone only the portion that is needed for the substation, so the first step would be for Austin emergency to determine exactly where the substation is going and then we would have to get a survey of where that area is for the application. At that point the application could be submitted, I would then have to do the staff review, the hearing, of the planning commission hearing and then of course bring it back to the city council and notify city council as well. So I am not sure. I think the first part is the most important is identifying the area to be rezoned because that is what the notification would be based off of. >> Pool: So is that required because of how our draft ordinance is written or because that is required in the zoning process because when we grant zoning to other people we don't tell them exactly where a building has to go, for instance, rusthoven ..

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>> No because -- >> Go ahead. >> It is because the resolution says to initiate the rezoning of the area needed for an electric substation, so instead of -- recent think item number one on to the special called

does not say rezone the entire site, it says rezone the needed area needed for the substation, so I need to get that information from Austin energy and get a survey of that area because that survey would be determine the area we are notifying, you know, 500 feet around. So once that is determined then I can move forward with the zoning case. >> Would this all go faster if we just rezone the Austin energy property as a hole? Like without all of this, allow this process to move more quickly. >> >> If it were, I don't know if it is already subdivided yes because we wouldn't have to wait for the survey part. >> Can legal speak to that because I am way out of my league here. >> I am sorry. >> Mayor Adler: We had this conversation with legal and to

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allow it to proceed against the whole track. If that is what they needed. But I think to your point, I think the goal is to get this done as quickly as possible, Alison, so I don't know why it couldn't be initiated as to the whole tract and that is Austin energy determined more and more what land is needed you could amend the case. I mean, don't we amend to pull back the area that is involved in other zoning cases? >> Yes, we can do that. >> Mayor Adler: So you could start immediately with respect to the notice. You could start immediately, you don't have to wait, the goal here is to not wait and to move forward on everything that you can move forward on as quickly as you can move forward on. But if there is a language change to councilmember alter's point we would certainly make it, it is just the language that we had a discussion about all or part, my understanding and -- in the notes from my staff that

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were working on this, this was discussed with Mitzi and that the zoning case would allow for the whole site and allow for part of to site, but the goal here is to move it as quickly as possible. >> Let me just say the resolution is drafted for portion of to site because my understanding is that there was an interest in zoning just the portion, but we didn't have to know where that portion was. We can -- you are initiating it so if you want to initiate something different we can talk about changing the language in that resolution to say something different, to say the entire tract or the portion, whichever -- >> Mayor Adler: I think goal and we will take whatever language you suggest, is to make sure that we cover the greatest number of contingencies so as to allow Austin energy to get this back to us as quickly as they

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possibly can, as according to whatever it is that it determines that it needs. Councilmember Casar. >> Can I finish, mayor? I was still going down a line of reasoning. So if -- okay. So -- this is written to get the fastest through the process since this is not about whether we want a substation or not. Is this drafted to get the fastest through at process because it seems to me if it was the whole thing, we don't have to

wait for them to do other things. I mean, this is just like another zoning case that we change the use and we don't get to see the fancy models and other kind of stuff with that. >> Alter: And even, you know, a trail would come at the site plan stage as I understand it for most of our zoning, because we are not making this contingent on them doing a trail. We are saying we as a council,

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if there is a solution that allows a trail we would like a trail. But that seems to me to be a site plan issue, not a zoning issue, because we all agree that we have to change the use. And if we are going go down the road of zoning we should be able to skip through zoning pretty quickly and get to site plan so that the questions come up then, assuming that makes it faster if it doesn't make it faster then don't follow that. >> I can suggest some language change if you want in the first be it resolved it could say the city council initiates the rezoning of the property generally location at 2412 Cramer lane to zone the property as needed for an electric substation, take out the portion of. And then if it turns out that it is a more restricted area that's fine. >> Okay. >> Alter: I mean I am

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imagining, I just want to be clear, I ammaning this is a Rhett straight forward zoning case and we are just granting the uses and I am not sure where all of the other discussion comes in the process. It seems to me that would be a site plan -- zoning. You know, because we are not adding -- the goal here is not to add -- to this property, it is to get the substation built. >> True. I think there was concern initially with how much land, because there will be a companion text to take whatever portion of whatever amount of land is zoned P will be removed from the gateway, the north burnet gateway plan so I think there was some concern from a planning perspective to limit that but we will write it if we use the language you suggested that allows the whole tract or if we know what it is and it is a smaller tract or run into issues, with doing the whole tract and it is faster to do a smaller portion, we can do that, we can do that as well. >> Mayor Adler: Just figuring

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out what that wording is, we would gladly take that word change. Alison, did you have more before we went to someone else? >> Alter: I guess I am just wondering, I understand that we need to rezone it. I am just wondering why it has to be removed from the plan and you couldn't just change the plan for that one thing. >> Jerry may have a better answer than I, but since P zoning doesn't exist in north burnet/gateway and we are not going to amend the north burnet gateway plan to change uses there, it has to be -- it can't be both in the north burnet/gateway plan and have the tod subdistrict zoning it has now and a P zoning, so the amendment to the gateway, north burnet gateway plan was changing the

uses in the district that this area is as opposed to changing the plan to add P to the plan, and I think that is

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more complicated. So it is all just a matter of the path of least resistance. >> Alter: Okay. Thank you. >> Mayor Adler: Colleagues? And Mitzi, when you have that language, raise your hand and we will enter that into the record. Go ahead. >> I do. I thought I read it before but I must have been on mute but I have got it on my screen. And the first be it resolved, I would just change it to say the city council initiates the rezoning of the property generally located at 2412 Cramer lane to zone the property as needed for an electric substation to P zoning district, so we are removing the portion of and adding the as between property and needed. >> Mayor Adler: Any objection to that change being made? Hearing none that change is made. Further discussion? Colleagues? Councilmember Casar. >> Casar: I am good with everything we just did. That makes sense to me.

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Is there any -- is there any reason to not just rezone the whole property P? Would that save people time? Is there a thing where the smaller thing is actually faster? >> This is rusthoven? Not means we have to have a survey to get the case started if we get the entire, do the entire property we can get started sooner. >> Casar: So the fastest thing is to zone the whole the thing. Mitzi, the language you just read to us that we just incorporate asked achieve that we don't need to change it. I just wanted to double-check, because I have no problem just rezoning the whole property and we have no questions. But if what we just did covers that, then we are good. >> It covers it. >> Casar: Okay. And I think everything is -- >> Mayor Adler: Councilmember kitchen. >> Kitchen: Just a quick question. I mean, it sounds good to me

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also, but just a quick question. So-so what we are doing is, so Mitzi, what we are doing is measure 88 it for the -- how did you put that, for the purpose of the substation? Is that right? >> I have to unmute and then -- no, that's okay. So what I had put in there was initiating rezoning of the property at 2412 Cramer lane to zone the property as needed for an electric substation. >> Kitchen: So that means that's the limitation on what we are doing here. I think the mayor mentioned it earlier, if I heard him right, but that is what the focus is here. So it is not for doing anything else as part of this particular stoning action, it would be only for that purpose, correct? >> Correct. >> Mayor Adler: Okay.

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Further discussion? Councilmember alter. >> Alter: So just to be clear, is there any other language that we need to provide to focus on simply getting this substation the, the zoning needed for this substation through so they can do their site plan and move to the next stage. >> No, councilmember, not that I can think of. >> Alter: Okay. And the site plan does that have to go back -- >> Well, under P zoning, if P zoning is approved by the council can this is initiating the zoning but presuming the council later approves the P zoning, that would require an approval of the planning commission, because all uses over one acre in P zoning require the approval of the planning commission and the decision they make is appealable to the city council. >> Alter: Okay. And -- >> If it was just item 31, then it becomes -- with the staff recommendation it becomes a

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permitted use and it wouldn't require any further approval from the planning commission. If you went with the planning commission's recommendations it would still require a return trip to the planning commission. >> Alter: So the staff's recommendation on 31 does not require a return trip to the planning commission. The special called one does require a trip back to the planning commission? >> Yes. >> For the site plan, yes. >> Alter: And that plan is appealable? >> Yes. >> Alter: To the city council. Okay. So if we -- I am still trying to figure out why we don't do both but if -- let me just go down this part first. If we -- if is thinking that we ought to be provisions ah to the planning commission to make sure that we focus on substation P and don't add, say, affordable

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housing or add weird things? >> With regard to the zoning -- with regard to the zoning case, separate from item 31, you already made the recommendation on 31, with regard to the zoning case, the resolution just directs us to ensure an efficient and expedited zoning process to not cause unnecessary delay. That's the direction of the city manager. We would of course have to take the case to planning commission for the recommendation to you, but it would be up to them as to what their recommendation was. >> Alter: And there is no direction we can provide, because they are a sovereign board; is that correct? >> I believe so, I think Mitzi could address that. >> Well, they are a sovereign board and subdivision but on this they are just providing you a recommendation on the zoning. >> Alter: Okay. Thank you. >> Mayor Adler: Further discussion on this item 1, special called meeting? Councilmember kitchen? >> Kitchen: I am sorry. So the planning commission goes back to the planning commission and provide a recommendation,

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but isn't there a recommendation, the scope of the recommendation set by the language that you just said, which is the purpose of this is for the substation, right? >> Yes, councilmember, with regard to the zoning case, we would take it back to them, you know, as a P, you know, zoning case, and they would make a recommendation to the council, my point was that when -- if the P zoning were approved by the city council, any use to Sony property that is zone P, any use that is over an acre would require approval of the planning commission at the time of site plan. So they would make a recommendation on the zoning case, but if you approved the zoning case, then the site plan would have to go to the planning commission, you know, further down the road. >> Kitchen: But the scope of 0 what the planning commission would do with the site plan is, if we felt we wanted to put parameter on it we could do that when the zoning case came to us? >> I don't think you can put parameters on the, whether it goes back to the planning

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commission or not. >> No, no, I don't mean that. I just mean on the scope of what the planning commission would be looking at. >> I don't know that you can do that with a zoning ordinance but if the commissioner were to approve the site plan in a way somebody wanted to appeal with council then you can make changes to it. >> Kitchen: Okay. >> Mayor. >> Mayor Adler: Further discussion? Councilmember pool. >> Pool: So Mr. Rusthoven, which is the quickest path toward authorizing Austin energy to begin its work on this critical infrastructure project? >> If item 31 were approved today as recommended by the staff, with the substation would be a permitted use on the effective date of the ordinance which would be ten days from today. >> Pool: And if we move forward only with special called 1, what is the time frame on 0 that? >> We would have to go through

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the 0 zoning process and get the P zoning approved by the city council and the site plan would have to be approved by the planning commission. I don't know how long it would take. >> Pool: And we are all assuming in the end what we want is to have Austin emergency to be able to move forward on this critical infrastructure project. That's sort of a rhetorical point that I think that pretty much sums up the intent of this council is to move forward with this project, so the question is, sooner or later. >> Mayor Adler: Okay. Any further discussion on this internal called number one is? Councilmember Ellis? >> Yes, I think question all want to make sure Austin energy can all move forward with this. We are all supportive of what they need to do to make their department and the city run really well. Think I for me especially the talk about doing both doesn't quite make sense because, one, it keeps it in the regulating

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plan and as a permitted use to the whole regulating plan, and the other removes it so that it does have that P stoning and so they both will allow for that use, but I think there is a concern about understanding the notice requirements and making sure that this particular site can be used for this particular infrastructure without necessarily changing the whole plan in the process. So that's kind of where I am approaching this. But I think we are all in agreement that we want them to be able to move forward. I think I just prefer to see this particular use and this particular spot not necessarily changing the whole plan for it. >> Mayor Adler: Further discussion on this number one? Let's take a vote. Councilmember pool. >> Pool: Yes, I just wanted to double-check, are we changing the whole plan by changing one use that applies across the -- Mr. Rusthoven? >> In the tod. >> What 31 does it amends the permitted use table, so it would

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allow that use to, it would allow them in anyplace that has similar zoning. So. >> >> Pool: And how many places in tod do we have utility zoning like this? >> Well, none, because it is a civic use that would require to be a government agency. >> Pool: Right, so the point is it is only in this case. So, you know, I am fine with you all voting against 31, which is what the staff wants, and for special called item 1, which is what the mayor has advanced but I just want you all to understand it will delay any kind of action on Austin energy moving forward with this critical infrastructure project by probably four to six or nine months, and so I leave that with you all and as I have said many times, this is not my fight. Did not bring this. This is a staff proposal, I supported the staff proposal as far back as may when they first first advanced it, I don't know how it has gotten so freaking complicated, for me it is pretty

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simple, we should endorse Austin energy moving forward with this critical infrastructure, which is going to provide electricity support for the upcoming soccer stadium and for the 6 million square foot development to be dash cam pus which is the brandy wine development and for to the other .. Development that is happening, you know, not just in district 7 but in the northern, northeastern, northwestern part of the city. You know, it is not my fight. I think we move forward with the quickest path forward that is possible, which is item 31. It has gotten complicated. Which I don't think is necessarily helpful or necessary. So if we can step back from all of that, maybe we can make the appropriate public policy rational decision which is to endorse the request from Austin

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energy to move forward expeditiously on this critical infrastructure project. >> Mayor Adler: Further discussion on item number 1 in the special called? Hearing none let's take a vote. Those in favor of item number 1, please raise your hand. Those opposed. Those abstaining. Councilmember pool abstains, the others voting aye, Kathie, I can't see you so I don't know how you are voting. >> Tovo: Aye. I was voting aye. >> Mayor Adler: And with a 10-1 vote, item number 1 in the special called passes. That's all the business in the special called meeting. So I am going to adjourn the special called meeting here at -- well, no. I am going to keep it open just in case people -- well, I am going to close it. 6:41 that meeting is adjourned.