

City Council Work Session Transcript – 11/1/2022

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[9:15:54 AM]

>> Mayor Adler: I am going to convene today's -- we're going to go ahead and convene today's Austin city council work session. Today is Tuesday, November 1st, 2022. And we are in the boards and commissions room here at city hall. The time is 9:16. Colleagues, we're going to start today with the Austin energy base rate discussion. We'll see how long that goes. At the end of that the mayor pro tem asked for there to be a discussion about speaker times. I think -- at meetings, and we have a few of those left. And then I would imagine as a council you will revisit that. Yes. >> Alter: Mayor, it's my understanding that item 73 was postponed. I don't want the staff to stay just to announce it's postponed. >> Mayor Adler: This is the -- the Ila with Travis

[9:16:57 AM]

county. >> It's postponed. >> Alter: With the county? >> Mayor Adler: Would a conversation on that help at all? No? Okay. So 73 is pulled. So again, we're going to start with the Austin energy base rate discussion. We'll go to a discussion about speaker times. When we're done with speaker times then we'll do pulled items. At this point the only pulled item I'm aware of is councilmember tovo's ifc with respect to property. Councilmember kitchen? >> Kitchen: I was waiting until you're done. Are you done? >> Mayor Adler: Not quite yet. And then we have an executive session. There are two things that are noticed on executive session. One is a copyright matter and the other one was posted for the availability to discuss labor negotiations. If somebody wants to have the executive conversation on labor negotiations, let me know, we put it on there

[9:17:58 AM]

just in case. But that's why it's on there. If no one asks then the only item we would talk about would be copyright. Ann? >> Kitchen: I had asked for an executive session this time. I'm not seeing it, so I just -- my question is when are we having it. I had asked for executive session on my budget rider. My budget rider related to replacement of the northridge shelter. So I apologize, I must have missed the response to my email. So when is it scheduled for? >> Tovo: And may I add to it? Is it something that we could talk about as part of the public property ifc that I brought? >> We could. We could do it on Thursday. Or today. But the staff has got to be prepared because they have to -- >> Mayor Adler: Do you know the question that councilmember kitchen is wanting to address?

[9:18:58 AM]

>> I think it's a real estate executive session and apologies for not catching it for putting it on today. I certainly know that the staff would not be ready today to talk about it, the real estate folks and Diana gray. We could provide a memo for conversation. >> Kitchen: No. This is a conversation for council, it is a conversation about how are we going to proceed with the funding options that might be available for a shelter. And there's a number of places to potentially choose from. This is more about the funding, not so much about which place. >> Mayor Adler: Would you check and see if we could do this on Thursday? >> Kitchen: Yes, please. It's very time sensitive because if we're going to take action we only have a few more meetings to do it. And again, my focus here is on the threshold question is how might we fund this? I mean, there are questions about the location and I'm not trying to push a particular location, but I don't us to get clear

[9:20:02 AM]

because our staff is not being able to move forward because we haven't answered them. >> Mayor Adler: And to the degree that it needs to be about a particular piece of property, I do have some particular pieces of property that I would raise as the basis for us to be able to do it on Thursday. >> Kitchen: Gotcha. >> Mayor Adler: Let's hold off on conversation until we get there on Thursday. Mayor pro tem? >> Alter: I believe that when we set the executive session for the labor negotiations we wanted that to be on Thursday because they're negotiating Thursday? So I would ask that we have that on Thursday. >> Mayor Adler: I think it's set for both days, no? We had set it that way. We just want -- so it's on the agenda on Thursday. People could call for it then. But if anybody wanted it today, there's certainly that opportunity. >> Alter: So I want it on Thursday. >> Mayor Adler: It could be both days. >> Alter: I'm just saying I want it on Thursday. You asked if they wanted it.

[9:21:03 AM]

>> Mayor Adler: Still, if somebody wants it today, find me, find Ann, otherwise it won't be on today. Leslie. >> Pool: Let me me know when you're going to call up Austin energy staff and I'll introduce it. >> Mayor Adler: Leslie, chair, let's start with you. >> Pool: If our presenters from Austin energy could come up. As you know, we're looking at having a number of additional work sessions and public hearings all leading up to a vote on the base rate case hopefully the first of December at our regular meeting that day. We do have December 8th as a regular meeting as a fallback, but today we are going to get a lay of the land from our general manager and from Ms. Cooper and Mr. Dombroski and I wanted to lay out some expectations in advance 6789

[9:22:05 AM]

we're going to be looking at asking Austin energy what is the gap that Austin energy is trying to fill? They're looking for a particular amount of money. That number has been questioned by the ihc and Iha. And so we're going to be looking at comparisons of the baseline reports so we could look at the numbers in that context and make some informed decisions. And then the second piece as we look at different strategies, much like when we're looking for options that we can all consider, I'd like to make sure that we do that here. In other words, that we bring sufficient options and different levers for the calculation so we have really good information to build our decisions based on the option scenarios. Then I have some scenarios that I've described here and I've provided them to Austin energy, a scenario that uses a graduated increase of the customer charge that

[9:23:05 AM]

steadily goes up over three to five years, much like we are doing with the broughted -- much like we're doing with the psa to avoid rate shock, a scenario with four tiers instead of the proposed fee. A fund transfer and that is how much money comes from Austin energy into the general fund each year. A scenario with any savings identified by the independent consumer advocate that is supported by the independent hearing examiner. And a variety of combinations of these items that work to fill in the funding gap. The point is we need to fill the funding gap and we need to make sure we have sufficient money in the reserves so that Austin energy is not once more in the future confronted with a situation like we have been dealing with this year. So just to recap, we're looking at five or six

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opportunities to have discussions with Austin energy among work session, public hearing and then our voting meeting. So thank you very much for folks being here and general manager Sargent, I'll turn it over to you. >> Tovo: Mayor, can I ask my colleague a question? Councilmember pool, is that list of questions posted somewhere? The scenarios that you just ran through? I have a couple that I'm asking

staff to prepare and I want to -- I don't think I heard it on yours, but if you could share that list -- >> Pool: Happy to share if it's not already up on the message board, sure. >> Tovo: Thank you. >> Pool: This is generally what has been a topic of conversation throughout. And draws from the ica and the ihe as well as Austin energy. >> Good morning, mayor, mayor pro tem, council members, committee members.

[9:25:07 AM]

I am Jackie Sargent. With me today are mark Dombroski, chief financial officer and Tammy cooper, our senior vice-president of senior communications, regulatory and compliance. I want to thank you for taking time this morning to engage in the Austin energy base rate review process. With your support, Austin energy has become a recognized leader in clean energy, green building, demand side management and efficiency. Customer assistance and many other programs to address climate change. You and our community should be proud of the many accomplishments. As we began our current base rate review process, we soon realized that the participants in this case all share a few things in common with us. They want us to continue to provide affordable and reliable service. They want us to be responsible and efficient with both our energy and use of dollars and they want us to continue to lead on

[9:26:07 AM]

important goals while also being a respected community partner. I say all this because I know that you want these things too. We review our cost of service every year and at a minimum every five years produce a full cost of service study and if warranted, conduct a full base rate review process. This hasn't always been the approach. From 1994 to 2011, Austin energy did not seek base rate changes. We were not meeting our policies and bond covenants and our cash reserves had been spent. It became imperative that we adjust rates and set a path forward to ensure revenues would cover our costs to serve customers, meet policies and rebuild our reserves. So in 2012 the city council embarked on a process of reviewing rates and many of the stakeholders who participated at that time are the ones that are engaged today?

[9:27:07 AM]

Although the 2012 rate review wasn't exactly a smooth process, we learned a lot. And with the continued watch of the state legislature, the city council and Austin energy realized that we would need to have a more structured process going forward. We reviewed the public utility commission of Texas rate-making process as a guide and crafted a more structured process for our 2016 rate review. In 2016 through the city council adopted process, the city hired an impartial hearings examiner, an administrative law judge, to preside over what is essentially a legal case? That process went well. We

reached a settlement with most of the parties in the case and rates were ultimately decreased starting January 1st, 20. Fast forward to today and we have gone through the same structured process with an impartial hearings examiner, however this year it's more challenging to find an

[9:28:07 AM]

outcome everyone can agree on. Austin energy has not had a base rate increase in over 10 years. Let me say that again: We have not had a base rate increase in over 10 years. And in fact, as a result of the 2016 base rate review, we reduced base rates by 42 and a half million dollars. I can't think of anything that hasn't increased over the past decade. But we do share your concern for our customers who are facing cost pressures as well. Unfortunately we've also reached a point where we can no longer delay adjusting our base rates. As people move into Austin, they are moving into increasingly more energy efficient homes. Customers are simply not using as much electricity. And that's a good thing. It also means that due to our current tiered residential rate structure, 77% of these customers are not paying their fair share of fixed costs.

[9:29:07 AM]

An assumption that many people make is shouldn't it cost less to serve people in those more efficient homes? And the answer is yes and no. Yes, they use less energy and that reduces our power supply costs, but our fixed costs, costs that are recovered in base rates, are increasing. Our infrastructure is aging and must be maintained, rebuilt and upgraded. Additionally we must add new substations to serve new neighborhoods in larger buildings. We're paying for the ongoing operation and maintenance of a much larger and more complex system than in the past. And we continue to see increasing costs for both labor and materials. So as our costs outpace our revenues we must structure our rates in a way that fairly charges customers closer to what it costs to serve them. We cannot continue to delay what needs to occur now and hope that the situation will improve. Because I can tell you it will not. And in fact, will only get

[9:30:08 AM]

worse. We know that our customers want stable and predictable rates. And that makes our work on demand site management, energy efficiency, green building, weatherization and customer assistance even more important. Austin energy is committed to continued leadership in all of our program areas as we work with all of you to advance the city's outcomes and goals. And with that I will turn it over to Tammy cooper for a brief presentation. >> Thank you, Jackie. >> Tovo: Sorry to interrupt. I have a quick question. Are the intervenors -- what is the easiest place to find the different intervenors' reports, including the independent consumer advocate? I know we've gotten a few binders and I'm trying to find

that report again and I can't put my hands on it. >> All that information is available on the city clerk's website and we have the url and the packet and we can certainly send that to you by email so it's something easy to click on. And what you find in your binder is just a small

[9:31:08 AM]

fraction of the material that is part of the proceeding and there's frankly hundreds of documents and it was too much to print out so we kind of put some highlighted, you know, kind of information for you in the binders, but they're available on the city clerk's website. >> Tovo: Thanks. So the previous binder, again, I have it. I'm just trying to remember where I saw it. So it's not -- so the consumer advocates report is not in this binder, is not in the previous binder. It is part of the full documents and are those full documents linked as a part of today? Is that url part of the backup for today's session? >> I don't know that it's officially part of a backup, but the url is listed on the slides I'm about to go through. >> Tovo: Thank you. And if I could ask the city clerk to add that link and at every ae session that we have from here on out if we could have that url listed in the backup I think that would be helpful that way the public can also easily access all that fully information. >> Pool: And that same url

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and specific links to the documents should be part of the Austin energy page that has the rate case on it. >> Yes. We also have a link to the city clerk's website on our website as well. >> Pool: So the two connect. >> Yes, they do. Thank you. If you can pull up the slides. And what I'm going to do is just give a quick refresher on some of the process. I know that we've discussed this with you before, but as we kind of culminate here in the final phase I thought it would be a good idea just to do a little reminder of the process as Jackie alluded to. Next slide, please. Next slide. Oh, sorry, I have a clicker. Thank you. And as Jackie mentioned in 2012 council established the process to review Austin energy's base rates and I just took a quote from that particular ordinance so that you can see where that was

[9:33:12 AM]

codified. And it references the hiring of an independent consumer advocate and also an impartial hearing examiner. And -- hearing examiner and I'll talk about that more as I go through the slides. Just for your awareness, there will be some acronyms that you will hear. So you will hear for independent consumer advocate, you will hear ica. And for impartial hearing examiner, you will hear ihe. So I'll try to say that out and not slip into acronyms, but if you do hear that, that's the distinction. And essentially what -- those two roles are clearly important roles in this process. The independent consumer advocate is specifically retained by the city to represent the interests of residential and small commercial

customers. And the reason this is done really is because it's done throughout the United States for the most part in

[9:34:12 AM]

investor owned rate-making proceedings. Many states have a separate agency or a division in the attorney general's office to represent these agencies because they are not typically organized in such a way that they can be represented as a whole in many rate-making proceedings. And then the impartial hearing examiner or the ihe, is modeled after an administrative law judge. And you may hear an acronym alj. We've really mixed up all the terms here, but initially it's very similar where the impartial hearing examiner is someone who is not affiliated with any of the parties, does not have any financial stake in the outcome, and is there to sit as a judge between all of the participants, including Austin energy, the independent consumer advocate, and all of the other parties who are participating in this process. And here's the busy timeline slide. We've shown this to you

[9:35:13 AM]

before, we're heading now towards the final part of this timeline. As you can see we have completed kind of the 48, the blue and the gold sections of this. So a lot of extensive outreach, participation by the parties. We have had multiple documents filed as council member noted. So there's been a lot of activity. As we are here toward the end in the Orange section, we have highlighted as well all of the different meetings that are coming up. So you can see that really since the beginning of the year this has been a very intensive process for both Austin energy and the participants. And as I mentioned, we had multiple community outreach meetings before we had the hearing. Those were targeted specifically at residential and commercial customers. And through the speak up austin.org website we had over 600 public comments submitted. As part of the formal process, the participants are listed there on the right-hand side and you can

[9:36:14 AM]

see all of these. And again the independent consumer advocate or ica, is just one among many of the parties who participated in the proceeding. And they asked a lot of questions of Austin energy. We call that discovery. And they submitted and we responded to more than 500 questions about our proposal and provided all the information that was publicly available to the parties. We also had the formal hearing process that included all of the participants. It was open to the public. And it lasted over three days at Austin energy's headquarters. And as I noted, this was led by the impartial hearing examiner. And as I said earlier, he is an expert in utility rate-making with no specific affiliation to Austin energy or

any of the participants. And in fact, he has not spoken substantively with any of the participants about this proceeding. The only interaction on the tans that the participants,

[9:37:14 AM]

including Austin energy have, with the ihe, is either in the public meeting or through written documents that are filed on the city clerk's website. So at this three-day hearing, a variety of witnesses were made available for questioning and then following the hearing all of the parties filed a post-hearing brief or kind of a summary of their position for the independent -- the impartial hearing examinatory review. And the impartial hearing examiner's recommendation was issued on September 9th. It was 148 pages and is a detailed summary and analysis of Austin energy and all the participants' positions on more than 40 discrete issues that were raised. And that material, that recommendation is in the binder that is in front of you. And this recommendation is really intended as a starting point for council deliberations. As Jackie mentioned, council has refined the process over the last few years and in determining to reach out and bring in the third-party

[9:38:14 AM]

impartial hearing examiner, that enable council to really have a place where it can go to look at an independent analysis of the issues from Austin energy's perspective as well as from the other participants. Just a quick high level summary of the recommendation. Generally the ihe agreed with Austin energy on the majority of our revenue requirement requests. He did note that the rate design changes that Austin energy was seeking are well articulated and consistent with certain city rate-making policies and principles. He observed that Austin energy proposes a reasonable standardized approach that would ultimately move all customer classes closer to the cost of service. Now, in that, though, he did express concern about rate shock for some residential customers, but finally noted that one way or the other Austin energy must recover its revenue requirement through its rates. And here is the link to the city clerk's website that

[9:39:15 AM]

was discussed earlier. You can see there. Again, every document that is publicly available is included here, including our base rate filing package, all of the parties' written testimony, the briefs, the ihe's recommendation and the exceptions to the recommendation where the parties have taken issue with some of the things that the ihe proposed. All of the videos of the hearings are archived on atxn for any one of you or member of the public to review those. And as councilmember pool mentioned, we do have a separate web page for our rates. And with that I'll turn it over to Mr. Dombroski. >> Good

morning. I'll address some more information on why, why did we make the proposal we did in the data that we looked

[9:40:16 AM]

at. So the first is we were really trying to address three issues. The first is that we need an increase of \$35.7 million in revenue. And what this does is it allows us to recover our actual costs that we spend to serve our customers. It also improves the financial stability of the utility. As you know we've gotten through two credit down grades over the last few months. This will start to move the needle in the other direction. We also need to change the base rate structure to reflect the actual consumption patterns. This is based on how customers used energy in 2009. It's separately different now in 2021. In fact, we're selling 77% of the kwh, kilowatt hours, below the cost of service, so it's hard to recover the cost. It also question roll operates the tiers to reflect the actual patterns that we're seeing. The third goal is to move

[9:41:17 AM]

residential and commercial customers closer to their cost of service. This is part of the issue about the rate shock. Part of the reason why we're seeing rate shock now is we did it to ourselves, we did it to our customers, both in how we set rates in 2012 and what we did in 2016. As you move your customers closer to what we call unity or closer to the cost of service, future rate changes will be more equal among classes of customers. And finally, it reduces subsidies between classes of customers. So as a result we have our commercial customers that are picking up more of the cost than they attribute and residential less. So first about this of the things that the language that you will hear us use and how that comes into play, so revenue requirement. So revenue requirement is just simply what does it cost us to operate the utility. And this is based upon the actual historical costs. It's not projected costs, it's what we actually spent.

[9:42:18 AM]

And in this case it's what we spent in 2021. We'll then take those costs and that becomes the Austin energy's cost of service. We take those costs and then we allocate it amongst all the classes of customers. So we have residential customers, our commercial industrial are broken up by secondary 1, 2, 3, primary one and two, transmission customers and lighting. So each of those then become that customer's class cost of service. So you will hear me say a residential cost of service. So it's those costs that we've allocated to the residential class. And finally, a rate design. Rate design is how we construct to collect those revenues from each class of customer based upon billing determinants. So this is kilowatts, kilowatt hours or the number of customers are the three main ways that billing determine gnats. If you bill all that times those rates, we should get the total revenue requirement for the utility.

[9:43:20 AM]

We also have some confusion on years. So to kind of clarify, all of you are familiar with the fiscal year. So this is from October 1st through September 30th of the year in which the title is. So in this case our costs are based upon fiscal year 2021. So that's September -- October 1st 2020 through September 30th, 2021. Then you will hear us talk about the test year. And all the test year is, it's that fiscal year and then we make known or measurable changes. So if we know that we're not going to have an expense in future years, we'll take it out of the fiscal numbers. If we know we're going to have an expense then we'll add it in there and that becomes our known and measurable changes. And finally, the base rate review. That's the year in which we're actually doing the review. So in this case it's 2022. We did a base rate review in 2012, but 2009 was the test year. Just to give as an example.

[9:44:20 AM]

And finally the effective year. That's the year in which the rates actually changed and in this case we're forecasting to change those in 23. -- In 2023. As Jackie pointed out, we don't change base rates that often. For 20 years we didn't change them at all. The reason why we were able to do that is generally load growth or more consumption allowed us to recover our increasing costs. So as you add more customers, you add more load, and that increases the revenue and allows us to cover our cost. In 2013 we did increase base rates by about 6.4%. And then about five years later we had another rate case and we reduced them 6.7% with 42 and a half million dollars. So this yore, we're proposing a base rate increase of about 5.6, so it's less than what we reduced it by last time.

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Base rates are used to cover our fixed cost. It is not the cost of the electricity. So tree trimming, debt service. We call them fixed not because they don't change, but they don't change based upon how much kilowatt hours that customers use. That's not the driver. That's the driver of the electricity. Specifically excluded in base rates are power supply costs, customer assistance program, energy efficiency, street lights, transmission type costs. Those are all collected at other types of rates that we assess our customers. A good example I like to use is an automobile. Most people will borrow the money from a bank, and they'll take that out for five years, and they'll pay a fixed amount each month for that car. And as they drive that car, they have to put fuel in it. Car, they have to put fuel in it.

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They might take the bus to work rather than drive, so they drive fewer miles. In that case, they would have the same car costs, the same car payment, but they'd have a lower fuel bill. You wouldn't call your car loan company and say, I only drove half as many miles this month, so I'm just going to send you half my car payment. That's kind of what we do with base rates. So think of all the infrastructure, the poles, the transformers, the wires, the employees, the trucks. That's what we're recovering. So if you were to adjust your usage, you'd get a lower cost. I think that's a good analogy to think about what we're talking about. And on a customer's bill, we recover a lot of different types of costs. So it sort of shows you in

[9:47:23 AM]

proportion what we cover in a typical inside of Austin non-cap residential customer. So this is using the rates as effective as of today. So you know the psa that we adopted became effective November 1st. So you can see about 80% of that bill is really directly related to the provision of electricity. So the bar on your far left, the black bar there, about 30% is for those fixed costs. The o&m, the debt service, labor, vehicles. About 38% is the power supply judgment. That's the cost of the actual electricity that the customers use, and about 13% is transmission. That's the cost it takes to get the electricity from where it's generated to the customer's -- or to Austin energy load zone. The transfer, indirect support, capped treatment lights, energy efficiency piece, and economic development. You add all those together, it's about \$99.86 for a typical customer.

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In recovering those fixed costs at re is our challenge. If you go back to 2014, which was our last test year, since that time, we've increased customers by 18%. That's a lot of customers, a lot of infrastructure, capacity, reliability to ensure. At the same time, re, our sales of kilowatt hours has only increased by 4%. So there's a real disconnect between the cost we're trying to recover and what we're recovering it in. The yellow line there, that's the actual revenues. You can see that weather plays a big part of how much revenue we collect. And you'll see in our quarterly update that you'll see in November, 2022 was a very hot year. And so our customers used a lot of energy to cool their homes. They really overpaid this year, because it's a fixed rate times a variable of kilowatt hours. So we earned about 40 million

[9:49:29 AM]

more because of that hot weather. We didn't have 40 million more of expenses because of it, but we collected it. And we have a really mild year like you saw back in prior years, and then we undercollect, and that's the result of collecting a fixed cost and a variable rate. So why do we need \$35.7 million? A couple reasons why. So, the first one is we have what's called a master bond ordinance. That governs -- we go out and we borrow money from investors that give us that money and we make certain

policemens to them that we will ensure that we have enough revenue to pay back those bonds. And they have in there a specific formula called the net revenues formula, and here I'll demonstrate it for you. So it says every year in which you have your audited results, they'll measure your net revenues, and if it's not enough to cover -- if it's not positive, then you will address

[9:50:30 AM]

your rates, charges, and fees, and you'll adjust them to make sure it has positive net revenue. So, looking back in 2021, you can see here the column on the left, the formula. And you'll see that we had a fund balance of \$383.1 million. That's our cash and reserves. You'll see that the net revenues was \$257 million. If it wasn't for the fund balance, the amount of cash we had in the bank, then we would not have passed this test. So if you remove that fund balance, we would be negative by \$126 million. I've been reporting to you each quarter, our cash has been being depleted. So that fund balance is getting smaller and smaller. We don't yet have audited results for 2022, but given where I see the cash balances, I think we're going to see a much closer margin in '22. So, at some point, we are required to adjust rates as a pledge to our bondholders.

[9:51:32 AM]

The next is our financial performance. And again, each quarter we report to you our financial performance, and here is a trend for year end, for '19, '20, '21, and '22. As you can see, we have not hit at least four of those metrics since 2019. The reasons why we have these financial policies, it provides us a basis for good financial management and risk management for the utility. You don't just change your metrics in order to comply with them. The idea is you change your practices to comply with the metrics. And here you can see that in 2022, the point I made earlier, which was we had a really hot summer. So we saw -- we had forecast a negative 4% operating margin. We came up with a 2% positive margin, well below our target of 10%. But it was positive. And that's because of the hot

[9:52:32 AM]

summer. But we still had a budget deficit of \$3 million. So, current revenues did not cover current operating expenses. That's because we need more revenue to cover our costs. Another way to look at this is, what do our customers see over the years? And so, this chart shows you what a typical customer has paid since 2012. Those are the Orange bars there. And we match that with inflation. So how much did inflation change those costs for us. And you can see that it stayed well below the line of inflation. In fact, customer bills have actually been going down over the last few years. So one of the reasons we're seeing this what's termed rate shock, is because rates are so low relative to those inflationary costs that

we need to recover. That's one reason why rates need to go up to 5.6%. And because the residential customer is below their cost of

[9:53:32 AM]

service, it needs to go even more. And that describes the rate shock that we're seeing. Some of the prevailing thoughts or opinions that we're hearing is we're penalizing folks who conserve energy or penalizing energy efficiency. The things that we're seeing in the data is, first is all homes are becoming more energy efficient over the years. So this chart is from the eia, or the energy information administration. Since the 1980s, on average, all homes consume less electricity. That's the trend we're seeing across the country, and it's for a number of reasons. Improvement in building insulation and materials. Improvement in efficiencies like heating and cooling equipment, water heaters, refrigerators, lighting, and appliances.

[9:54:35 AM]

Think back in the 1980s, everyone had incandescent bulbs. Now most homes all come with led lighting. The codes that you pass for the city of Austin that makes homes much more efficient when they're build. So we're seeing this decrease in consumption across the board, not having to do with tiered rates, but just because of the way we build homes. And, in fact, we see that exact same trend happening right here in Austin. This chart shows two views. So, the one on the left with the yellow bars, this is single family homes. And the one on the right is multi-family homes. And you can see, if your home was built prior to 2012, you use about 1,100 kilowatt hours per month. And that stayed pretty constant through 2014. And then we started seeing a dramatic decrease in consumption. In fact, homes built that started taking service in 2020 used half as much energy as the ones built prior to 2012.

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If you live in a multi-family home, you use half as much as that. If you live in a multi-family home built prior to 2012, you used about 654 kilowatt hours. A brand-new condo or townhouse today uses about 336 kilowatt hours, about half of that. So, residential uses more than multi-family, but they're much more efficient, and multi-family uses about half as much as residential. The reason why that's important for us is you've driven around Austin, and what we're seeing built are multi-family homes. In fact, I think we're just about 50/50 now. The permits we're seeing issued are much more towards multi-family homes than single family homes. So that's what we're moving into. The way we're picking that up is in the consumption pattern of our customers. And so this draft shows residential summer consumption. The Orange bars are what we saw in 2009, and again, this is what we based our current tier structure on. And the gold bars are what we

[9:56:43 AM]

saw in 2021. We use most of our energy in the summer because it's really for cooling. And you can see here that those gold bars greatly increased in tiers 1 and 2. In fact, the top of tier 3 is 15,000, and so we saw a 78% increase in consumption in those lower tiers versus a 12% decrease in the upper tiers. And because we have a steeply tiered rate, we expect to recover more, and there's higher tiers of consumption than lower tiers. That's where the subsidy is occurring. But it can't occur if you have too much growth in the first tier and not in the upper tiers. That's one of the reasons we're not recovering enough from the residential class. One of the questions that we have is, well, we have these tiered rates and it's intended to send a price signal to our customers. So we spent a lot of time

[9:57:44 AM]

looking at that and saying, well, how do customers react to these priced tiers? So, in theory, and it's a solid theory, it says that if -- when a customer gets to a certain point and it costs them more, they will reduce their consumption. And so, this is a hypothetical that would show you that if a customer was responding to a price tier, they would get up to the top of one tier, like tier 1 or tier 2, and they'd say, well, I don't want to go into the next tier, so I'm going to conserve or use less. And so you'd see them bunch at the top of that tier, and then the next tier would drop down, and those customers would bunch up to next of the top of the tier. This is what you would expect to see if customers responding to these price signals, or the tiered pricing. When we actually look at our customers and how they respond to them, they don't. They smoothly cross over these

[9:58:44 AM]

tiers, indicating they are not responding to these price signals. It's for multiple reasons. One, it's difficult to know what tier you're on, what tier you're in. And it may happen in the middle of the night when you're sleeping. And it's -- the difference is just not enough for customers to react to. It's a difficult concept in using electric industry. Tiered pricing really first came in fashion in California, and in fact, they've gone away from it based upon some of the same reasons that we're seeing here. Customers do not react to the price tiers. We do think they react to higher bills over time. So if you have a higher bill over a long period, they might install energy efficiency measures, but they don't conserve as a result of price signals. And we have a nice comparison we can look at right here in Austin. As you know, back in 2012, we

[9:59:46 AM]

set rates, customers outside the city of Austin have three tiers set at different intervals, and customers inside the city have five tiers. And so we looked at that. We said, well, how did they change their energy consumption or how much energy they used over time. And what we found was, it's called an index, we made them equal in 2012 and measured how much they change inside versus outside city customers. And it's nearly identical. So you can see that the things that are causing a reduction in energy use are occurring regardless of the number of tiers. And again, if you go back to the reasons why we're seeing these reductions, lighting, more efficient hvac units, more efficient appliances, all those reasons are what's driving this. It's not the tiers. Another point we often hear is, well, the tiers are important to

[10:00:47 AM]

protect low-income customers. And so, we looked at that, and we tried to determine whether that was, in fact, true. We don't collect income data on our customers. However, we do have the customer assistance program, which is income-based. So in order to be on the customer assistance program, you have to be 200% or less of the federal poverty level. So for a family of four, that's \$55,500. So looking at the cap customers as a proxy, we said where do they fall in terms of their energy usage. We find out those gray bars are the customers on the customer assistance program. And their energy use tends to be in tiers 2, 3, and 4. As a percentage, they're taking more of their energy in those tiers. For non-cap customers, those Orange bars, you can see that they're taking the preponderance of their energy in tiers 1 and

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2. And again, if you drive around Austin, this kind of makes sense. Think of all the new condos and apartments we've added in downtown, the Miller neighborhood, those are very efficient type units. And that's where a lot of folks are moving in, and those are expensive units. So it takes a higher income to buy one. And so we tested this theory in real life and we grabbed two zip codes. 701, which is downtown, and 724, which is in the northeast. And so these two zip codes look very different in terms of demographics. The housing values between downtown and northeast, so 724 is about 1/3 of the housing value. Their median income, 724, they're about 40% of the income level of downtown. 122 versus 50,000. Member, I told you that 55,500

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for a family of four is 200% of fpl. So, based upon that, you know, we have a lot of customers. In fact, that's what we see. .2% of the customers downtown are on the cap program. Almost 22% of the

customers in 724 are on our cap program. So, we can tell you that that's a lower income level. But if you go down and look at their bills, in downtown, their average bill is \$66, and it's 724. Even with 22% of those customers on cap, their average bill is \$102, or about 155% higher. So, just looking at zip codes, it tells you that a lower income zip code is paying higher bills than 701, which would be a fairly affluent zip code in Austin. The other thing that we heard is we have to have tiered pricing to generate efficiency and the customer is charged relative to tiered pricing, would skew those. So we looked at some utilities,

[10:03:55 AM]

and these were utilities in central Texas as well as Lubbock. In 2013 and '20, the chart on the right you can see that there was a reduction in average Reuss -- residential consumption in all of those utilities. The only utility that has tiered rates is Austin energy. CPS does have an adder during the summer, so I guess you could consider that a tier. If you use more than 600 kilowatt hours, they have an adder on your bill in the summertime. . Regardless of the customer charge. I think that really has to do with how their rates are set relative to the average consumption that each utility sees. And again, because if you have more of your sales in the lower tiers, and you aggregate more customers in lower tiers, you recover less revenue. This kind of puts all this

[10:04:56 AM]

together in perspective. And so, what this chart is showing you here is the yellow bars is where we had consumption in 2009 when we created these rate designs. And the gray portion is what we've added through 2021. So you can see that we've had a significant increase, 27% in tier 1 of sales. In tier 2 is about 11%. You add that together, that's a 21% increase in tiers 1 and 2, and that's the 77% that's below the cost of service. If you look at tiers 3, 4, and 5, we actually saw a reduction in those tiers. So, overall, you know, it's pretty significant there. And so, when you have a fixed rate multiplied at kwh in each tier, this caused us to underrecover our revenues. The other thing we've heard is -- well, you're personalizing these customers who are conserving. That's the reason why you see this growth in tiers 1 and 2.

[10:05:58 AM]

And what we're finding is it is the growth of new customers and not the migration of customers that's causing the significant increase in these lower tiers. So we took all the customers between 2013 and 2020 and we said in their bills, what's the maximum amount of usage we're seeing from those customers? And here, out of all of those customers, 38% of them stayed -- their sales stayed within tier 1, and 39% stay within tier 2. So that's as high as we're going in the tier structure. So that big growth we're seeing in the first two tiers, that's from new customers, not existing customers conserving and migrating down. Although that can happen and it does happen, but the phenomenon we're seeing is

new customers coming in. And the reason why this is important is we often hear people say growth should pay for growth. Well, if you have a new customer coming online, and they're only paying half of their cost of service, they're not pairing their share of growth. We're putting that either on other customers on the system or

[10:06:59 AM]

on our commercial customers. The other issue we're trying to address is trying to move customers closer to their cost of service. And what this graph shows you is that black bar. Austin energy, as a whole, our cost of service, we are \$35.7 million below our cost of service. That's how much more revenue we need to recover our cost based upon the test year 2021. You can see if we add that 35.7, we get the zero. For our residential cost of service for that class, they are currently about \$70.2 million under their cost of service. And so, what we're proposing through changing rates and through the cost allocations is to move them a little bit closer, about half percent, 50% to their cost of service, so they would be about \$24 million below cost of service.

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Still being subsidized, but that's about a half step getting to where they should be. This is part of the reason we're hearing that there's rate shock. I want to put it in perspective what we did last in 2016. So, we reached a settlement with all the interveners, and part of that settlement was with the consumer advocate, the same one we have this time. And his requirement was we take \$5 million and we apply it to the first tier. That was his requirement for us to settle. So we did that in order to get a settlement. So we put \$5 million into that first tier and that really drove down that cost. We brought that settlement before you and we show you how the bills laid out, and we still had a slight increase in the customer that was downtown, and we were instructed to make sure that that customer received a reduction in bill. So in order to do that, we had to put almost another \$4 million in the first tier to bring that customer below that line. And so as a result, that resulted in a 2.8 cent per

[10:09:04 AM]

kilowatt hour in the tier 1. As I've showed you earlier, we had a lot of growth in customers in that tier. And they're buying that energy at 2.8 cents is a significant reduction from the cost of service. So that's one reason why we're seeing this Orange bar so low. On the commercial side, what we call secondary 2 and secondary 3, these are retail stores. They're restaurants. Midsize strip mall type stores. Small business offices, things like that. Those customers are paying above their cost of service. And in total, about \$42.5 million. And so what we're proposing is to bring them down a little bit closer to cost of service. So they would be getting a reduced bill. And some folks have pointed at this as being unfair.

Why are we getting an increase because they're getting a decrease? This is the reason why. They're so far from the cost of service, and will never make

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progress on getting folks closer to their cost of service if we don't take this step. A good example of what we're showing you is look at the rest of those classes of customers, primaries 1, 2, 3, transmission customers. They're barely moving at all. The reason why they're barely moving at all is we moved them closer to their cost of service in 2012 and 2016. So as a result, they're all getting very small judgments because that's appropriate. They're much closer to the cost of service. If we can get residential or commercial customers, those S2s and S3s, closer to that what we call unity or zero, they too would also see less change when we adjust rates. So how does this all come together? The Orange box, that's our current rate structure. We have five tiers inside the city of Austin. As you pointed out, that's from 2.8 cents up to 10.8 cents.

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And for our test year, and again, this is slightly different because we call it weather normalized. So we assume that the weather is normal, and that's based upon a 20-year history. So when we rather normalize it, that puts almost 80% of the sales in tiers 1 and 2. The weather changes, how we collect the actual revenue from customers, but for the test year, that's almost 80%. So you can see that's heavily weighted in those lower tiers, and that prevents the cost recovery. What we are proposing is three tiers. We have three tiers outside the city now. We're proposing three tiers for both inside and outside. And proposing the change where they break. So rather than breaking the first tier at 500 kilowatt hours, we're proposing they're breaking at 300. The second tier would be 300 to 1,200. Above tier 3 would be 1,200 or more. The second tier is approximately the cost of service. And the third tier is above the cost of service. What this produces is much more

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proportional tiers, so it allows us to recover that revenue from our customers, based upon how they're using energy now, those consumption patterns. And with that, I can answer any questions that you might have. >> Pool: I've put the scenarios up onto the message boards where everybody can see that. A question on this last page, Mr. Dombrowski. I'm interested in looking at what it would -- what the breaks would be for four tiers, for example, would you be able to run us some numbers that takes your second tier and maybe makes second tier -- and I'm just blue skying here, 301 to 600, and then 601 to 1,200, and see how that 51.1% breaks out? >> Sure, we can do that.

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I can get into just a little bit more -- different forum. So there's a relationship between the customer charge and the energy charge. Currently, we have a \$10 a month customer charge, and what would pose as a \$25 charge. And so, you could go anywhere from going -- collecting base rates in all a fixed charge, and that would be about a \$60 a month per customer charge, and have none collecting kwh. And you could collect it all in a kwh, and that would be about on average 7 cents per kilowatt hour. So you could adjust that anywhere you went to. The offset was there was a lot of instability when you collect it all in kwh. Because this summer, we had a really hot summer. We would really overcollect from our customers. In a mild year, we would not collect enough revenue. So where you break those tiers relative to how much you're trying to collect in the kwh charge is what we're managing. So, what's almost more important than the number of tiers is where those tiers break. But we can run those scenarios.

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But in the end, what we have to calculate is that we achieve that average cents per kwh in order to collect those costs from those tiers. >> Pool: And would you run a scenario where the four tiers that has the rate that doesn't get to \$25, but say, gets to 18? >> Yes. >> Pool: And then see how the costs flow into the four tiers to achieve the recapture? >> We can -- yes. >> Pool: Okay. >> Mayor Adler: Mayor pro tem. >> Alter: Thank you. I think this is a really helpful presentation to understand what's going on and I do encourage folks to read the hearing examiner's report. It goes into a lot of detail and I think with these notes, it will help in reading that. A scenario that was not included in -- I don't think it was included in what council member

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pool has brought up is one that I've been talking about with several folks from UT and commissioners, and that is where you raise the customer charge a certain number of dollars, but you don't change the tiers as much. You have a goal of the 37. And I think we've asked you to run those, and we have not heard back on what that would look like. I want to flag that I'm interested in seeing a scenario where we move the customer charge up, not as much, but we don't lower the tier prices. We might decide we need to move -- I'm open to moving the break points for the tiers, or the number of tiers. But the reason that I want to see that in addition to just trying to understand how that would work instead, is I'm really up comfortable with the choices that I made inside versus outside city of Austin, and the way this setup works

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because you're shifting all of the money over into -- you're shifting a lot of the fixed cost into the customer charges. You are lowering the rates significantly that those outside of Austin are paying. They are using more energy, and they were already paying less than those of us inside. So I need to understand that as well. The alternative I'm talking about avoids that. >> We can get those numbers. If I recall right, the scenario that you're describing, the math didn't work. >> Alter: I haven't seen the math, so I don't know. I'm not going to advocate for something where the math doesn't work, but I have asked to see -- >> I do want to dispel a myth, that customers outside the city of Austin do not pay less than the city of Austin. >> Alter: Well, their tiers are lower, so at the same rate of usage, they are paying less. >> That's correct. Their bills are higher -->> Alter: But that's because

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they're using more energy, not because they're -- you know, and they're paying less per kilowatt. So they are paying less than we are for the same amount of energy inside the city of Austin. >> That's correct. And that's because recovery and fixed cost at a variable rate. So, recovering more from those customers that would recover from the inside the city of Austin. >> Alter: I'm going to be really clear that I'm going to need that to be made very crystal clear, because I am not able at this point to explain to my constituents why we have this differential, because it looks like they are paying less to me. The math may work that way, but I have requested this scenario, I have not seen the answers to that. And I think it is another way to think about the levers that they have, which is to raise the customer charge, not as much as -- to raise three, four, seven, whatever the right amount is, and not do as much on the tiers.

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You may even be able to go down on the tiers, but going all the way down that's below what they were paying for the outside does, in my view, have some distributional implications. >> We'll make sure we follow up with you. >> Alter: So I want to see those. And then when will we see an updated proposal? Because you now have the material from the hearing examiner, you have the different things that are a few changes, small changes to revenue requirements, I think, on the margins. It's been a while since I read that report. There were obviously a lot of recommendations or concerns that were raised. Are you planning to come up with an alternative, or are you sticking with your proposal even in light of what they've come back with? >> Well, in our rebuttal testimony, we did address the reduction from the 48 million to the 35.7.

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And so, that is what the ihe recommendation is based on. And in our response to the ihe recommendation, we did indicate a few areas where there might have been some suggestions that we could either disagree with or not. But I don't believe we were planning to redo the entire 500-page proposal. It's really just sort of all sorted out with the various other filings that have been done. >> Alter: Okay. I may have some other questions, but let me ask one last one right now. At some point in the presentation, you said that the -- and I may have my numbers wrong because there were a lot of numbers here. You said the average bill was 100, and then you're increasing it only 5%, but yet we're telling folks it's a \$15 rate. I just want to make sure I have those numbers. >> The 5.6% is the increase in

[10:20:15 AM]

revenue requirements. Because we're changing how we allocate those costs, the various classes of customers, that's where you get the different number between the bills or the rates for our customers. >> Alter: Okay. So the 5.6 doesn't apply to the residential higher than that in terms of the percentage increase? >> That's correct. >> Alter: So we need to have numbers that our constituents can understand, because they're going to be looking at the residential rates, and if somebody misconstrues that chart and says it's a 5.67% increase, and it's not really that, because we are doing that as an average over the classes, then we're not communicating clearly. >> Absolutely. We have that broken out. And we'll provide that. We'll show that for you next time we meet. The 5.6 is regular requirement. To do the cost allocation and the rate design, that determines the bill. So that's why those numbers aren't necessarily reflective of each other. >> Alter: Okay. Well, it's a little bit misleading than the way that that's -- misleading may not be

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the right word. It's not helpful in explain rag the percentage increase is from that chart. I understand you're trying to tell us one particular thing, but it was communicated like we were raising it less than we had in prior years. And I'm not sure that that's the case for the individual. >> I apologize. We are not changing bills by 3.6%. That's the revenue requirement we're changing. >> Alter: Okay. But you didn't present us the number, the percentage for the bill. So I think that's the number that we care about. >> We can get that. >> Mayor Adler: I have a quick question. The discussion about rates has always been a tough one. In part because there's so much information that's out and suggestions of impacts and rules, and sometimes it's not

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true. Sometimes what makes intuitive sense is not what the data shows. So to have a data based conversation is sometimes difficult. And that happens a lot of times, and we have public policy conversations. But it seems to be -- this conversation seems to be most susceptible to that. Recalling a conversation that we had four years ago or five years ago, a lot of it centered around the loosage of low tier, and whether low tier users were the same as economically vulnerable users. Because a lot of people were trying to get the greatest savings in the lowest tier, when in reality, that was further disadvantaging people economically, because that's not where they were. And the effort to try to get the greatest savings at the lowest

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tiers was actually counterproductive to the public policy arguments that people were making. I think the chart that you have on page 13 of this -- or rather page 31 of this presentation is one of the ones that is just eye-popping I think for people, which compares what the bill is in 7701 downtown, relatively affluent area, with the bills that are paid in 7724, and east. Putting aside for a second that this is yet another piece of really good evidence as to the systemic injustices that exist in our society. If you have less wealth in order to be able to buy a more expensive home, because through generations your family hasn't

[10:24:20 AM]

been able to accumulate that wealth, we're going to make you pay higher utility bills, which is the net effect of the policy we have. And this just shows that once again, those kinds of systemic impacts. But I am interested in this one. Because it's what the data shows and it's the reality. Usually, when somebody has a flat rate that's being paid, it's generally believed to be regressive because a flat rate paid by someone with a lower income, that flat rate is going to be a greater percentage of their total income. So we try to stay away from flat rates. Except that we have this perverse situation here with our energy where people who are more affluent are able to pay lower rates because they use less power. So it's almost the opposite is being the case.

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It almost looks as if the scenario would be that the flat rate is actually the Progressive way to be able to charge power rates. If we start out with the presumption that a lot of the people in the more affluent areas are the ones that are going to be able to pay, be able to use less power and therefore pay the lower rate in the lower tier. We have the comparison of 01 and 24 zip codes under the existing rate structure. Have you run this same thing to see how those two zip codes perform under the proposed

rate structure? >> I have not. And I can see if we can do that. >> Mayor Adler: Is it susceptible to that? It would seem like it would be. >> It could be. Before I promise we can do it,

[10:26:21 AM]

let me see if we can do it. >> Mayor Adler: Would you look and see? >> Yes. >> Mayor Adler: Because it almost begs the question as to whether or not the flat rate maybe is not going up enough. Maybe the fairest thing we can do in the system would be to have the flat rate go up more. Of the \$102 in the average bill, you said that we could run the base rate entirely on a fixed charge. Everybody in the city the same flat rate. And it would be about \$60. Where we could charge everybody based on the power and charge everybody the same rate. Which doesn't make sense. But I am intrigued by the first one, which is the \$60 charge. I'm not suggesting we do that. With this line, I'm interested in seeing what that base rate may be. You may have already done this analysis. But of the 102, do you know how

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much of that 102 is the base rate component? >> It would be about 30-35% of that. It's hard to tell, because about 22% of those customers are on cam. So we waive their customer charge, the \$10. So it's a little hard for me to do the math. 30-40% of that would be base rates. >> Mayor Adler: Okay. >> Probably. >> Mayor Adler: Okay, and then the other people living in that area who don't have that, it would be roughly 40-45%? Maybe. I'm asking you to pull numbers out and I know you hate to do that when we're sitting here, so I'm not going to make you do that. >> I do -- you make a good point about how people see tier like taxes. You have a regressive tax, which means it's a uniformly applied, like a sales tax. And so it's 6% of whatever you do. Regardless of your income, you spend 6% of sales tax, that's a

[10:28:23 AM]

regressive tax. So the less income, the higher percentages of your total income. Utility tiers aren't like that. In tier 1, every customer is in tier 1 regardless of income. So whether you make \$10,000 a year or a million dollars a year, your first 500 kwh are in tier 1. If you use more than 500, some of those customers go to tier 2. So it's not Progressive and regressive. When we send electrons, we don't know their income level. So thinking of it in terms of Progressive and regressive really is not accurate. The real question is charge everyone the rate that it costs to provide the service and put programs in place to make sure that those customers who are lower income and have a higher energy burden are provided the assistance that they need through the program, as opposed to trying to change the rate. What happens is you get these unintended consequences that we're seeing here. >> Mayor Adler: Right. So my last question goes exactly

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to that point. If we were to do something, that equalizes even more, we're going to have some people that are most vulnerable that need the greatest protection. Is there a scenario where we did that, but expanded to a greater degree the assistance that we showed to people that are most vulnerable in order to really target -- since the tiers don't get us to where we need to go, the bills don't get us where we need to go. Just to be straight up and say we're going to increase the assistance that we give to people most vulnerable, and we'll figure out how to pick that up in our rate structure that equalizes us. >> A lot of folks criticize us because we use cap as a proxy for low income in Austin. Make no mistake, we're aware. We only have about 35,000 cap customers. About 25,000 of those come through the auto enroll program.

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So if you're an applicant or receive aid through one of those programs, you're automatically enrolled. We also allow customers to self-enroll, and that's only about 10,000. We do know there are many more customers that can benefit and they are low income. We should do, quite frankly, a better job of reaching out to those customers and trying to get them to sign up to get the assistance they need. There's a lot of reasons why they don't sign up. Could be pride, they don't know what program, their immigration status. They won't talk to government. All those things come into play. I think we could do a better job of reaching out to many as many customers who qualify and get the assistance they need. >> Mayor Adler: And I think that's the point. We're all trying to do that one way or another. And the tools that we have to use it that are available to us are not effective tools to, in fact, do that. But if we had the goal -- since we know in the city there's more than 35,000 people that need that assistance, if the goal

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that we set for ourselves is to go from 35,000 people up to 70,000 people, or whatever the right number was, and said, go away, and over the course of this year, figure out how to get from 35 to 70,000, legitimate -- I mean, like let's double -- let's get much closer to the number of people that actually need it. And then built into our rate structure the ability to be able to actually provide assistance to where it's most needed, it seems to me that might be the best way to try to accomplish what we're trying to accomplish. Because as I hear, all the solutions trying to find it here that begin with things like, let's lower the base rate, I'm now thinking, my god, whatever you do, don't lower the base rate, because that's going to take people who are most vulnerable and make them even more vulnerable. And I just don't know how those things play with one another. We'll go to the chair and then we'll go to council member tovo

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and then council member Fuentes. >> Pool: That's really interesting about the base rate piece, so I would very much like to see that modeled. I agree that the cap program we need to assess that, and look at adding dollars to that program, and then a very concerted effort to explain what it's for and find those people who may have been reluctant to sign up for the cap program. And then while we're doing it, we can continue to scrub the criteria and make sure the people are truly eligible for it. But I do like increasing the funding into the cap program, and would like us to consider that. >> Tovo: I don't disagree on that point, but I do want to go back to a few things that the independent hearing examiner noted as well as the independent

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consumer advocate. And also, I want to echo the mayor pro tem's thanks. This was a great presentation and I think really sets a really important -- it's a great overview and is a really helpful framework for going and diving into both of those two documents that I just mentioned. Since we're talking a lot about processes these days, I just want to say how much better this process is than the 2013, and this was a construction of council. It was a council resolution that created the independent hearing examiner, the partial hearing examiner process, and it was a council resolution, that one was bill Spelman's, the next one was mine to create the independent consumer advocate and I think these are examples of how we learn from different things going on, and the council has an active role in creating processes that help the next time those things come up. So I for one am really grateful. Let me see what is not happening now are zillions of requests,

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requests to meet each of us individual and sending on tons of documents to each of us individually that then our offices were struggling to make sense of and juxtapose against one another. We have the hearing examiner who's done that. I do think there are points -- there are various points that we as a council need to discuss. For one thing -- well, I'll get to that in a minute. But I do want to talk about the independent hearing examiner's discussion about the base rate, since we were just talking about the base customer charge rather. They are concerned that vulnerable customers who do not qualify for ae's current cap program may experience rate shock. And just to put -- and echoes and confirmed some of what the independent consumer advocate says. I'll read from that report quickly. The independent consumer advocate talked about the \$25 being far outside the range of

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residential fixed rates currently charged by the other two Munis, Austin and this. Austin charges \$9.10. The independent consumer advocate notes that that increase will be -- would increase the fixed residential charge by 150%. And estimates that the bill impacts of this proposal will range from -- for those at the lowest tier, will be 50%. 50.75% increase. So I would really recommend taking a look. You know, especially if there were going to be conversations about the customer base rate. It sounds like the hearing examiner and the consumer advocate both confirmed that that increase is too high. The increase that the independent consumer advocate suggests is no more than \$13.

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But the bill impacts, they seem both. The independent hearing examiner seems to confirm what the -- the consumer advocate says this is going to be really a big rate shock for folks who are not on the cap program, and I think we all, you know, want to encourage lower usage. And so looking at a 50% increase on folks in that first tier is ginormous. It's a huge, huge bill impact. And just to confirm, the independent consumer advocate suggests that residential consumers using less than the average could have an increase of 30-50% on monthly bills. Is that something that you all agree with? >> It could be. So again, I showed you that chart, like if you're in a multi-family brand-new home, you might be using 336 kilowatt

[10:37:38 AM]

hours. So you're talking about a \$45 bill. So their bill might go up \$20 to \$65. That's the percentage, and it's because they're so far below their cost of service, and I explained the reason why. So that percentage sounds like a lot. Going from 45 to 65 is the actual dollar amount in one of thousand multi-family type homes. >> Tovo: Yeah. And I think, mayor -- I appreciate the conversation about increasing cap, but it is a stated goal of this city to encourage less energy use. And so, it's a very serious policy question for me, whether we want to increase the bills so much, the cost so much for the folks who are doing exactly what we've asked them to do. They're either doing a lot of energy efficiency in their own

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homes, they're choosing energy efficient units and they're doing so in part, you know, and that is what we want to see our city moving towards. So that is a policy consideration that I think we should really take into account. I know that you've lowered the revenue requirement from 48 million to 35 million. Have you included all of -- the independent hearing examiner goes through all the other requests for revenue requirement judgments. Have you included all of them? Have you accepted all of them, I guess I

should say. >> So, the independent consumer advocate was one intervener -- >> Tovo: I'm sorry, I meant the hearing examiner. In looking at the hearing examiner, it looks like there are a couple revenue requirements. I'm still trying to really dive into it. But it looks like they did agree with some of the other interveners about adjusting the revenue requirement.

[10:39:43 AM]

Have you -- in moving from 38 to 45 million revenue requirement, have you accepted all of the hearing examiner's confirmed agreement for those? >> So what we accepted was a revenue requirement of 35.7. >> Tovo: Okay. >> Allowing me to come back and correct myself. I believe the only judgment to the regular requirement was reduction in general fund transfer. We had 120 million. He recommended, I believe, 114 to 115. So the revenue requirement would be approximately \$31.5 million. >> Tovo: I just saw an agreement with one of the revenue requirements that wasn't general fund transfers. Either I read it too quickly, or there may be some additional ones. The reason why that's important is -- I mean, that's one reason, if we are -- if we lower the

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revenue requirement, there's less of a need to raise rates. And the independent consumer advocate came up with suggestions for reductions that would have reduced the revenue requirement from 35 million down to 6.5. The hearing examiner did not agree with all of those, but I do think a few of them are worth diving into and really talking about. The impartial hearing examiner did talk, as I mentioned, several times about rate shock. Was that examiner aware of the power supply judgment conversation? I'm going to assume the answer is no. >> We have the partial hearing examiner here with us. >> Tovo: I'll be darned. I had no idea. This is very useful, useful work. May I ask a question of the impartial hearing examiner?

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>> Just for the record purposes, my name is Travis vickering. >> Tovo: Thanks for your role in this process and for being here today. >> Sure. >> Tovo: As I was reading from your report, you talked about the rate shock that you felt, that you confirmed. And you also recommended maybe this will be the second -- another question after we do a round. You talked about the overall recommendation was that we explore a different rate design. So I hope we'll have a chance today to talk about that. But could you talk about the rate shock piece, and whether when you made that comment, whether you were aware of the fact that there would also be an increase to the power supply judgment that would hit those same rate payers? >> Not specifically. It doesn't mean that it wasn't mentioned. By the way, I came here today to observe, not to present. But that's okay. >> Tovo: My apologies. We do prefer to -- I think

you're on the agenda another day; is that right? >> Yeah, but I'm happy to chat for a bit. Just keep in mind, we drafted this recommendation as a team. There are actually four

[10:42:54 AM]

attorneys who -- three other attorneys who helped me draft. The attorney who assisted in the rate design is actually here today, Andrew edge. But he actually is not prepared to speak either probably. But let me just say this. Let me put something into context. We did not specifically agree with the ica on all of their recommendations for rate design. What we agreed with were concerns. And that's a very important distinction. There are concerns. For the psa, that was largely outside the purview of this proceeding. So we didn't delve into it. Does that answer your question? >> Tovo: It does. And so I won't ask that question about your rate design comments today for the reasons that you just described. But if I'm reading correctly, you did confirm the concern about rate shock to consumers, and that was outside of -- because it was separate from the

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power supply judgment, that was just based on these increases. So I think I would just say to my colleagues that the concern about rate shock, I would think, is amplified based on the action we just took. >> It is, but can I just say one other thing about that? The concerns about rate shock, you have already received more information -- and this is just the nature of the proceeding. We issued a recommendation on September 9th that I suspect was already stale by the time we issued it, because folks had been talking. You want ae to be talking to the participants, and they did, and they have been obviously. But we didn't do in this process -- I was an administrative law judge at the state office of administrative hearings for 14 years doing electric energy. I know Ms. Cooper, I know Mr. Brocado from that. So when you run one of these rate cases, at the ends of the rate case, you actually coordinate with the public utility commission staff because the soa judges -- which is what

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I was, the soa judges don't have experts to actually crunch the numbers and figure out what is the actual impact of what I'm recommending. So you do what's called number running. You coordinate with staff who are experts and then you find out what your ultimate conclusion is going to be, the information gets sent back over, and you do it all through an independent liaison, which I used to be as well, as a judge. You have a cordoned off judge who handsels all the number running. That didn't happen here, and that's okay. I say this because what we proposed were recommendations, and everybody needs to keep that in mind. They're open for discussion. It doesn't mean that other proposals made by other parties aren't reasonable. >> Tovo: Thank you. That's super helpful. I guess what we're asking for, I think

mayor pro tem asked for one, and I have kind of a number running thing I would ask for, and that is to pursue the resource management commission's

[10:46:01 AM]

suggestion that we consider a variable charge based on their amount of where they fall in the tiers. I think that's what the resource management commission is considering. We'll get that into the q&a, some variable, some setting that customer charge differently based on where you are in your tiers, which may or may not be possible. >> I haven't heard that. That's news to me. I would just caution that could change a lot of volatility in your bills. Say you has a \$10 -- because every customer is in tier 1. So a \$5 customer charge, if your bill only goes in the first tier, and \$10 in tier 10. From month to month, your bill would vary a lot. I'd be cautious against that. One thing we try to do is predictable bills for our customers so we can budget like we need to. >> Tovo: Okay, thank you. >> Fuentes: Thank you.

[10:47:02 AM]

I also just want to punctuate this conversation by stating that today, the increase in the psa took effect. So many of our Austin energy customers are feeling that \$15 average increase on their bills, some of which were state regulatory fees. And then here we are considering a proposal that would double the base rate amount from \$10 to \$25. So I'm very concerned about the rate shock that this will have on our residents, particularly our residential customers. And so I had a series of questions around total revenue tier structure, cap program, and customer charge. Just one question on each of those. The first question I have is on the total revenue. I know you touched on this a little bit about how Austin energy originally proposed a rate increase of 7.6%, which would have been about 48. Million through the independent

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hearing examination. You then decreased that down to 35 million after the ihe findings. Can you talk a little bit about how that happened and the decrease there? >> Correct. So, our first request for increase in revenue is 48 million. We did decrease that to 35, but that was before the ihe. So during discovery, and this is how it works. We noticed that within the model that we had subtracted a negative number. And when you do that, it creates an addition. So just a change of sign. The formula was correct, but the fact that we put a credit into the specific cell caused the number to increase. We worked with -- I believe it was the consumer advocate. We agreed that that in fact should not have happened. And that was on our nuclear decommissioning expense. So we reduced it from 38 to 45. >> Fuentes: And also through the

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ica, seems like they recommended heavy equipment leases in addition to the non-nuclear decommissioning. And allocating that bad debt equally would reduce -- they recommended that if you allocate differently, that that would reduce the residential fee by 3 million. >> Right. A couple things there. So the first was we have a long-term lease on our heavy equipment. I believe his rationale was you should not make a note or measurable, in other words, increased cost because of that lease, because the council hasn't adopted it. It was adopted in September. We planned to bring it like we do every year, and so it was adopted and approved during the budget process. The non-nuclear decommissioning, we set aside \$8 million every year to take down and remove things like decker, sand hill, the biomass plant, plants like that. And so that was based upon a decommissioning study, and what

[10:50:09 AM]

he recommended was to take it from 8 million down to 2 million. 8 million still isn't enough, even according to the study that they approved last time. I'm not sure -- they didn't even know we had nacogdoches as a plant to acquire. So we did agree we need to update that non-nuclear decommissioning study to figure out how much money we need to collect. But in the meantime, to continue to collect the 8 million per year as we have since 2016. On the bad debt, it's about how you spread that bad debt amongst the customers. And so the reason why we don't do it for all the customers equally is because they don't all contribute to the bad debt equally. And so for residential customers that get behind on their bills, we have a very -- many steps before that customer gets disconnected, or when a customer leaves, it becomes bad debt. On the commercial side, that's not necessarily true. So they don't have as much bad

[10:51:09 AM]

debt for their class. So we don't spread that residential bad debt over to the commercial side. So as a result, we disagree the ica on those changes. >> Fuentes: So on the portion of the equipment leases, it seems like there could potentially be a decrease in that amount. >> Oh, no, yeah, we've already signed the contract. We approved it, ordered the equipment, and getting the bills for it. >> Fuentes: So that is a set cost at this point. >> Yes. >> Fuentes: Okay. On the tier structure, we talked about the differences in compressing, and from five tiers to four tiers. I think, council member pool, you mentioned you have a proposal to look at three tiers? Or was it four? Four tiers. I guess my question on that would be -- well, just a general question, given the rate amount. Seems that a lot of the revenue that we're seeking to recoup is coming from the residential

[10:52:10 AM]

fees, versus commercial and industrial fees. That to me just signifies back too inequities that we have with our Austin energy bill structure. I appreciate this chart that you laid out here. That shows the depiction of a household in 78724 versus a downtown zip code. But this also says that the percentage of single family homes in that downtown zip codes is at about 18% versus in the northeast zip code, which is at almost 75%. So there is already differences in people who live in condos and apartments that will use traditionally less energy. So I guess my question on that really would be for more information on how we could better balance the tier structures. But maybe perhaps any

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consideration for a three-tier scenario? >> Right. That's what we presented. Maybe what's more important than a number of tiers is where the tiers break. So that's one thing we're analyzing. We will bring back to you some analysis. But we've proposed a three-tier structure so. The majority of customers in the single family homes would stay in tier 2. >> Fuentes: On the customer assistance program, that program is centered on individuals in extreme poverty. 200% of the federal poverty line. You mentioned the 55,000 household income for a household of four. But for one individual, you'd have to make less than 28,000 to be able to qualify for the cap program. It seems that many of the assessments that are being made on the participants of the cap

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program is really limited. Only 30% of individuals who are eligible to participate in the cap program are actually participating in the cap program, and even then it truly is not a reflective assessment of all those individuals that have a need for lower utility bills. This is for individuals at 200% of the federal poverty level. So my question could be, could we also get some information on the typical energy use of a household that is making between that 28,000 to 61,000, that would be about 80% mfi? >> Yes. In fact, I have an analysis by census tract, which is the smallest group that I can get down to, because I don't have individual customer northbound levels. But I do have census tracts. And so, that's usually around 4,000 individuals. And I do have that by census

[10:55:12 AM]

tract and I have both consumption and income, and I can present that to you. >> Fuentes: Yes, but do you see what I'm saying? We're trying to encourage more people to participate in the cap program, but the scope of the cap program is super limited in the individuals that it would reach. >> I think that's a policy call for you as a body, which is where do we set those thresholds. So that's a discussion for you to

have. We adopted 200% fpl, and I believe the reason why is -- and I'm not the cap expert -- is many of the programs, the auto enroll programs, that's the level that they set. If you qualify for that, 125, or you qualify for medicaid, it's 200%. And so by doing the auto qualify, is why they set that at that level. And I think you probably have to have our folks come in that manage the cap program and discuss that with you. But that is certainly a policy call for you to make on that.

[10:56:14 AM]

>> Fuentes: On the thresholds. Okay. My last question for now is on the customer charge. There's a chart on one of the backup materials that has comparisons to other utilities in the surrounding areas, like pernales and blue bonnet. Why are we comparing to those utilities versus peer city that are more our size? For example, Austin, Lubbock, for a more accurate assessment of where we stand with our fee structure. And also just wanted to reiterate that the ica, the independent consumer advocate, states that the residential customer charge should not exceed \$13 and the proposal that we have before us is at 25. >> The reason why we selected

[10:57:15 AM]

these things, page 32, CPS energy is Austin. Different cities, the residents there take energy in different ways. And so, Austin and Austin are the only two major cities in Austin that have a municipally owned utility. Cities like Houston and Dallas, Fort Worth, take it from an investor-owned utility, and they have reps, that's the competitive market. They don't publish tariffs. And so you have to go look at contracts. We look at eia data, which comes out about a year late. So it's hard for us to exactly judge what individual customers pay for in Dallas for their energy. But if you're a cooperative like perdnale, or blue bonnet, that's why we use these for a

[10:58:18 AM]

comparison. >> Fuentes: Austin is also municipally owned? And their base rate is at \$9.10? >> Right, and they have no tier structure. They have almost 1,100 kwh is their average consumption. So they can have a lower rate and they're assured of recovery because their customers use more energy. With us, with a \$10 charge and more concentration of energy sales in the lower tiers, we're not assured of that. So we're trying to balance between that fixed customer charge and what you collect in energy. It becomes more -- the math becomes more complicated with the tier structures. So I'll be glad to follow up with you and demonstrate some of that for you about what we're trying to balance. >> Fuentes: That would be helpful, but we would be setting our rate at \$25, when Austin, a much larger city, has their rate

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at \$9.10. I guess with that, I would just like more information to understand that financial difference. >> Just be aware that in addition -- the balance of going from 10 there and \$25 of the customer charge is we're lowering the cost for kwh and changing the tier. So it's a balance between the two of them. We're not just taking one action. >> Fuentes: Thank you. >> Tovo: Council member Fuentes, I was interested in one of the points you raised and I wanted to make sure I was understanding it. It had to do -- your analysis of the example that they selected with regard to looking at multi-family housing in the downtown area and primarily single family housing in the northeast. Were you suggesting that the type of housing is -- that it's kind of not comparable because the type of housing is different? >> Fuentes: Right. Basically, having a different zip code subset to more accurately reflect the

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differences in usages versus the charge. >> Tovo: That's a really interesting point. Thank you. I think that's true probably we could find a higher income single family, primarily single family. Thanks for raising that. >> Mayor Adler: Also express an interest in the information requested that correlates by census tract usage and income. Again, just to get a feel for how those things are correlating. Council member Kitchen. >> Kitchen: I just want to echo what everyone else has said, mayor. I think you mentioned it, and council member Fuentes and others may have also. I think that we need to have this conversation with the cap program in context.

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Which means I think we're going to need to talk to the cap program folks, because the number one thing we're all concerned about here -- I mean, a key thing we're all concerned about is the rate shock. We can't have that conversation without talking about our cap program. What I don't want to do is "We'll talk about that later." So, mayor, I think you mentioned it. Council member Fuentes did also. I would suggest that we allow ourselves the appropriate time to have that conversation with them and understand what the options are in terms of making that program more broadly available to the -- to people who need it. >> Mayor Adler: The latter part of that being the really important question, which is not just to explain where we are and what the net impacts are, but what are our options if we want to use the cap program to better address the shock, especially

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among those people that are going to be least able to weather that shock. >> One of the advantages is we do waive that charge. So if you're on the cap program, you're insulated from the change in rates. If you're a higher consumer, say one of the single family homes built in 1950s in our east side of Austin, your energy charge will go down less. So you're pretty much insulated. But again, you have to be on the cap program to get that benefit. The challenge is how do you get those customers who qualify and deserve that benefit, how do you get them on the cap program. And I think that's our challenge. >> Mayor Adler: And I think that's a question we're looking for answers to. I expanded even further because I think council member Fuentes did raise an interesting question, which goes to the fact that I don't feel confident here that I understand the relationship between consumption and rate and bill and income.

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And I don't think I understand the dynamic associated with the flat rate and how that impacts those variables. So I too am going to be interested in seeing the comparison of single family census tract in the northeast and a single family census tract in the northwest so that we have the same kind of unit being used, because that's a variable that has been identified as something you just don't know intuitively what's right. But also knowing then how this change in structure would again impact that. Not just seeing what our current fee structure does, single family home census tract in northeast versus northwest, but what would those same two census tracts be under the proposed structure, which increases the base rate. Yes, council member pool.

[11:04:27 AM]

>> Pool: To that point, too, remember with the housing bond that we are hoping passes -- oops, sorry. It will be on the ballot next week. There's money in there for repairs to homes, which is really important, and it's targeted for lower income parts of the city. And if indeed the higher energy consumption is related to lack of insulation, old casement windows, poorly closing doors, and whatever is in the eaves and so forth. The city has for a long time had these kind of home improvement kind of funds available, and it would be good for us to look at how much money is in that fund and really ramp up the identification of the structures that we need to be enlisted to have that work done at no cost to the people who live in those homes. So we can actually bring the homes up to a much higher

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standards with regard to electric consumption. And that would have a really good impact on how much energy they need to use because the house would be more solid. >> We set aside \$47 million in '23 for that program. >> Pool: And in the \$350 million package, we haven't identified a specific amount. We've let those numbers float. But the improvements to existing homes is a really important piece to me that's

in that package and that proposal. And this is an area particularly where I'd like to see that. And mayor, I thought if we were drawing this to a close, because we'll have some more conversations, I wanted to run through the dates again. And then I also brought a bit of a piece of information to put up on the overhead. I think our av guy has this on a thumb drive. And I'd hand this to Tammy

[11:06:30 AM]

cooper to walk through. This is my bill for October 6th to 24. And of course, the total amount that you pay on your bill is not all electric. It's your water, it's your wastewater, it's your drainage and clean street fees. On the back shows how much -- and I tipped into the third tier a bit in October. I'll pass this down for Ms. Cooper, and then have our av guy put this up on the screen. >> I'm actually going to pass this down to Mr. Dombrowski. It's on the thumb drive. I think it's already loaded up. I saw it flash on the screen before the meeting started.

[11:07:31 AM]

So this shows you the breakdown of the tiers and how everybody pays tier 1 and everybody pays -- and those who are in tier 2 pay tier 1 plus tier 2. To me it was a little bit like -- and I thought oh, gosh, this isn't a very nice comparison. Maybe it was kind of like income tax, right? It's a marginal increase in the additional taxes. Not on the entire amount. >> That's correct. And you have that average rate should be collected amongst all the tiers. >> Pool: And the nice thing is there's a lot of additional information on the back. Shows your 13-month average, how much you pay a day, your monthly usage, and that sort of thing. I wanted to have ae staff kind of walk everybody through this. >> So, we have the city of Austin utilities billing service, so it's for all utilities. So if you're a water customer, you'll have that. But on the electric side, it's

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called out. So the first is a chart on the left there. This is a histogram. It allows you the view how you compared to last year at the same time. So you can see you're pretty close month to month. But you can see also that you are a severe summer Peaker. You're turning on your air-conditioning. >> Pool: I'm totally on that. >> And for 2021, your bars are probably higher than you were a year ago, and that's because you had a hotter summer. That's the weather driving that. On the right side are the individual numbers. So you can see that readings from your meter point out -- we don't actually have meter readers anymore. We don't go house to house looking at your meter. This is all done through automation, or what we call advanced metering infrastructure. So we take that download, and

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that's what's used to calculate your bill. So you look at what was last reading in this year's reading, and your total is your total kwh. In your case, you used 1,072 kilowatt hours. Going down the bill here, that's that customer charge of \$10. That's fixed. Regardless of the number of kwh you use, we're going to bill you \$10. The first is tier 1, so we talk about breaking at 500. And again there's that number, that 2.86 cents. So those first 500 kilowatt hours cost you \$14.01. The rate -- that might be double. To tier 2, the next one. The next 500 are at 5.832 cents, so that costs you \$29.16. The point I'm making is, regardless of your income, all your 500 are at this rate, and the next 500 at the next rate.

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It's not income, it's not Progressive or regressive. The next tier 3 is you crossed over to that by only 72 kilowatt hours. And so we billed you at 7.814 cents and that totalled 5.63. And regulatory charge is billed completely on kwh. So that's 1.206 cents. That gives you the \$12.93. Community benefits charge, it's totally based upon kilowatt hours as well, and that came to \$5.53 and that pays for area street lighting, the customer assistance program, and the energy efficiency program that I just mentioned. The power supply adjustment. This is the actual cost of the electricity that you used. So those are electrons. When you turn on the light, that makes it turn on. Your appliances run. That's the electricity. That cost you \$30.84, and that's

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2.877 cents per kilowatt hour times 1,072. You heard me mention that that is a fixed rate all year long. I keep thinking that if customers knew what it really cost them -- so, for example, in June and July when you had high consumption, the fact is it's actually costing us, Austin energy, probably closer to 5.5 or 6 cents to deliver that energy to you, and we're going to catch it up through the over/under collection. Had you gotten that price signal, maybe you would not have crossed over. I don't know. That's the price of the energy. That's the price signal that you should be getting that you're not getting. But that comes through the power supply. And finally, there's a residential sales tax that we apply to certain elements of the bill. That's 1.08 for the city sales tax at 1%, so your total bill is 109.82 for 1,072 kilowatt hours. >> Pool: The total bill was more

[11:12:38 AM]

like \$230 with all the other utilities included, and I do think sometimes people look at the bill and think all of that is electricity. >> Yes. >> Pool: But in reality, it's half. >> We often get calls at the customer

service center and they'll say I have a problem with our electric bill, and customer service reps start asking the questions, they find out it's about water. So we understand that -- if it comes from Austin energy, we will run to the billing department. But this is city of Austin utilities. You don't see an Austin energy logo on here. So we combine it. It saves money for our citizens. But it is confusing at times. >> Pool: Thanks. And I assume there aren't any questions about that. Everybody gets the bill. So I'll just close by reminding everyone about our base rate review schedule today with the work session we had the briefing, which laid out a really good grounding for what

[11:13:38 AM]

we're looking at. Lots of reading material. More questions will be occurring to everybody. I urge everyone to submit them to Austin energy. You don't necessarily have to put them up on the message board. I've put the scenarios up that I posed earlier in the meeting on the message board, if you want to put yours there, then they're all accumulated. Austin energy will be looking for input from you, not only on the message board, but also personally. I urge the additional one-on-ones. On November 9 at 10:00 A.M. Is our special called oversight committee meeting with invited testimony from Austin energy, the hearings examiner, the independent consumer advocate, and all of the interveners in the base rate case. And you've seen that list of whom all they are and I think it was also. On the 15th we'll have at 10:00 A.M. At council a public hearing where all public testimony is invited and encouraged.

[11:14:39 AM]

November 29, 9:00 A.M., another work session. We have the oversight committee meeting on that day and we will have agenda items relating to the base rate. On November 29. And then December 1 at 4:00 we'll call a public hearing during our council meeting and then that will be our first opportunity to consider taking a vote on the base rate. This is where public testimony is allowed. We've got the posting times 10:00 A.M. With the 4:00 P.M. Time certain for Austin energy's public hearing. And there's some more links up on my message board post with a base rate review information website. Austin energy base rate review information web page. Again, the scenarios that were posted today, and I know that Austin energy has picked up all the questions and requests for information from everybody here today. Thank you, mayor. >> Mayor Adler: Thank you.

[11:15:44 AM]

Mayor pro tem? >> Alter: Thank you. I just wondered when you might -- we've given scenarios on what to run the numbers on, which may or may not work, when we would be able to have that information. >> Can I get back to you? I think some of those we've already run so it's a matter of applying them. Others might be more difficult so I want to get back to staff before committing to them, but we'll do it as

soon as possible. >> Alter: And just for clarity because on your slide 14 it's titled Austin energy 2022 base rate review. It says only two base rate changes since 1994 and that's where I got the 5.6% number. It doesn't clarify there that you're only talking about the revenue requirement. So that is the slide that I think needs to be updated so that we are talking -- so folks know what their residential rate increase is because the proposal is well above a 5.6% increase.

[11:16:45 AM]

For the average person. >> You are correct, yes. >> Alter: So thank you. >> Mayor Adler: Okay. Anything else? This is very helpful, thank you. Colleagues, the next thing I had was for us to visit on the discussion on speaker times. I think the question was whether to give speakers multiple -- one minute for each thing they sign up for. And we were requested to raise that at a work session. Reminder what we've been doing is giving everybody just one minute to talk. We've been trying to keep speakers generally to an hour in the morning and an hour in the afternoon. We start at 10:00. Generally speaking we try to stop at noon. That means half the time

[11:17:46 AM]

then in the morning for speakers and then in the afternoon an hour starting at 2:00. To give people multiple minutes I think it has the advantage of giving people more chances to speak, but also more time associated with speakers. This could be something that you want to experiment starting next calendar year, which is what I would urge. We have basically two real big council meetings coming up in December and I'm not sure that those would be the two meetings to change the practice. I would urge you to kind of think through it and maybe spend more time figuring out how to facilitate something like that. But the will of the council be done. Councilmember pool and then councilmember Kelly. >> Pool: Yeah. I think that it's late in the day to change the

[11:18:47 AM]

process at this point and I also think there's a little bit of disagreement around whether the statute requires one way or the other. I would like to urge that we -- we who are going to be continuing on council in 2023 consider realigning the public input with the items as they are called. And I'd be interested in talking with the dais about returning to that approach. We made these changes due to the pandemic and otherwise we wouldn't have done it if not for having to bring people on remotely. So I would support what you are saying, mayor, about holding on to any specific changes. We have four meetings left to this month, and I guess kind of a consent meeting on the 15th. So fewer than a half dozen meetings left in the year, so take it up next year. >> Kelly: I would also

[11:19:49 AM]

agree with councilmember pool that this is probably something that the remaining members of council could discuss in more detail as we get started in the new year. I am working on an item related to meeting management. So if anyone interested in joining that with me who will be here next year, please let know know. Thank you. >> Mayor Adler: Councilmember kitchen. >> Kitchen: I have no issue with that. I to want to point out two things, though, that we need to figure out. We have two major puds to consider. One is the statesman that we've already been talking about. And the other is the potential for the Brodie pud, which is my district, to come forward at least on first reading. That's unclear. But if it does come forward on first reading, then that will be a major meeting. So the question is how are we going to handle public input for those sessions? I am concerned the way we've been doing it, which is we've been doing all zoning at one time and then we get

[11:20:49 AM]

to those zoning issues when we get to them. The problem with those two major things is that it totally separates the public's conversation from our conversation. And to me that doesn't work well. So in terms of generally how the council works moving forward, that is not for me to say, but these two pud are very important. So there may be other instances I'm not aware of, but these are two that I am. And so on behalf of district 5 if we're going to talk about if we do get to the Brodie pud, then I will want to have an opportunity for people to speak that is not so separated from when we actually have the conversation. So I don't know what the answer is. What we used to do is we used to have our -- have the

[11:21:49 AM]

comments closer to the pud. And we certainly do that for the people proposing the pud, for the developers. So they're available to comment right there as we're talking about things. So I don't have a hard and fast way that I think we should do that, but I think we do need to consider it. >> Mayor Adler: And there's precedent for that. If we're not going to adopt a general rule and the council members who are going to be here next year work on that, I would point out to you that the clerk's office wants to be involved in that conversation so that they can talk to you about logistical issues. So council member, make sure that you bring them in. If we're not going to be changing the rule today then we don't need them to speak today. If we were going to try to change the rule for December I think they would want to speak. Your question going to those two specific items might be something as we get closer to that meeting that we could fashion a particular rule for that conversation on that topic at that meeting. It might be a better way to

[11:22:51 AM]

do it that really focuses in on that element and then let the council decide as you get closer. >> Kitchen: That makes sense. I don't know what that means for the statesman pud. And I'll leave that to others to speak to, but for the Brodie pud that will work because there are still some unknowns [inaudible]. >> Mayor Adler: Okay. Yes. Council member? >> Ellis: Thanks. I'm supportive of letting people speak per item. I think there are some folks who may have been called to say they're called up for three items and I just think it's really hard for people to get thoughtful comments out in that amount of time. I also think it might be helpful to us if this is at all logistically feasible through the clerk's office to take up the numbers together so that people are speaking on the same items and you're getting all of that communication at once on the same topic so we're not jumping back and forth between the items. I am, though, supportive of doing all the speakers together in the mornings. I know especially for

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district 8 folks they don't have the capacity to be at city hall all day long. It's usually something they can carve out maybe an hour of their day, but as we get into the afternoon people just can't sit around all day waiting until their item is called that they want to speak on. I'm supportive of keeping them all together. But I would also like to revisit the public communication portion. I want to make sure that people aren't signing up under false names and I want to make sure we have a clear understanding of the language that is expected. We had a situation last Thursday with completely unacceptable language, and I believe in free speech, but we can absolutely not have that type of terminology being used during the noon hour. I think that's completely inappropriate and would like to look forward and maybe talk to legal about what kind of parameters and expectations there are for the open speaking sessions. >> Mayor Adler: I think those are good points. We try to get the topics grouped in -- and the clerk's office is doing that

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based on the best available information they have, but in two separate groups. So we do them on number first over the phone and then we do them by number not on the phone. But if somebody gets called on the first number that they've done and they want to also speak on another issue, that one is going to come out of turn because our rules right now have them having to speak all at once. And I wish we had better rules with respect to intervening with people. And boy, guys, if you guys could figure that one out in working with council on that, figuring out how to do that in a way that doesn't abridge people's first amendment rights. More power to you. That one escaped me, but that was certainly hard to listen to on last Thursday and quite frankly, I felt some appreciation for the members to who were able to and walked off the dais to

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just not condone that. I don't know what the rule is, but I would love for you guys to find one. Mayor pro tem. >> Alter: Thank you. So I think that we need to hear from legal as to whether we are required to hear from people and provide that opportunity for each item that they want to speak on, whether it's here or a memo, I'll leave that up to you at the appropriate time. I do think we need to have a ruling on that. >> Happy to help. This discussion is always a tough one. When we can, the law requires that you allow speakers on the items before you take a vote on them and you are all able to make a decision about how you manage your time around that and the specific question is a little more nuanced about do they get the same amount of time for each topic that they're going to speak about. So we can assess that and work on that a little bit more as we turn to the new

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year. Citizens communication or public input now you are not required to have it of course at all. And you do have rules of decorum for your council meetings. So people -- you can ask people to follow rules of decorum, but you can't limit, because of free speech, the topics that they talk about. So thinking a little bit of a nuanced conversation. >> Alter: Thank you. So especially when folks are coming to speak on two items that are not like the same topic. So like the statesman pud is listed twice. I don't necessarily think they get double the time because it's got, you know, the two items that are related to it. But like last week when we had the offset item and we had the environmental regulations, I think those were disparate enough items that I think we should have been allowing people to speak on both items and that required I think more time. So I think if we are in that situation, even in the coming meetings, I would

[11:27:59 AM]

like to give people that opportunity, but not to abuse it. But if there are really separate items. And then I think that it would be helpful to think about we sometimes have a ton of people coming who are on the same topic who are organized to come. And we used to be able to have donations of time from other things which allowed for a more coherent presentation of one side or another of an issue. And I think allowed people to really voice their concerns better than having, you know, 20 people coming and speaking in a minute, I'd rather have -- I'd like to see if there's a way when there's an option for that to have the number of speakers, but allow the amount of time to have the ability for a more coherent

[11:28:59 AM]

and clear argument to us. I don't think we'll get that figured out for December. There may be some items for which, you know, that is necessary. I think with the ae rate case we are making time for some of the intervenors to speak at length in the hearing so that gives them that opportunity. But you know, were there an item where that made a lot more sense, I think that helps us in our deliberations. I generally prefer more time for speakers, but I understand the balance of being able to move forward with our work. >> Mayor Adler: Okay. Councilmember tovo? >> Tovo: [Inaudible]. >> Mayor Adler: Pio, why don't you go and then councilmember tovo. >> Renteria: Thank you, mayor. We really want to this time

[11:29:59 AM]

limit because the attorney general ruled that we had to allow the speakers to speak on an item until we voted on it. So if the item went for three or four meetings, then they were always invited to -- have had the ability to come back and speak. And we didn't use to allow that until that ruling came in, which made the meetings do very long. I have no problem going very long on meetings. I never had. But there was a decision made that we cut our meetings off at 10 unless we vote to continue it. So I think that, you know, we're facing things that are not in our control when the attorney general ruled that. So I just want to remind the council members that that's why we're at where we're at now. >> Mayor Adler: Okay.

[11:31:00 AM]

Councilmember tovo. >> Tovo: Yeah. I have a couple of thoughts on this. One is, as councilmember pool pointed out, we adjusted our rules during the pandemic and had to. I would support adjusting our rules right now with the understanding that there's more work to be done, but I think for those individuals who are really coming down and speaking or speaking to us on the phone who are trying to talk about two topics in 30 seconds each or coming down and having only one minute instead of the three they once had, the issues they care about between here and December are going to be done by the time the new council gets seated. So I think if there's a concern that our group has about public speech and needing more of it, I would suggest that we make that change. At a minimum I would echo

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mayor pro tem alter's point that if people are talking about two very discrete items they should at least get the minimum time for each. And I would propose that we make that change right away. That's the reason we're having that conversation to consider eating at the it for that. Is there a consensus around

that if someone is talking about two very different items that they would get the minimum amount of time for each? I'm asking my colleagues is that something we can support doing right away? If you're talking -- if somebody has signed up on two very different items at least getting the one-minnesota Muslim? >> Mayor Adler: My recommendation to that if you're asking is to have a general rule because these will be two very tough meetings. If there's an item coming up like councilmember kitchen identified, to make an accommodation for that. >> Tovo: I'd love to hear from other folks. This is a pretty significant

[11:33:03 AM]

change that's been made very recently and so I'm suggesting we go back to something more similar to what the speaking opportunities were before. >> Mayor Adler: Councilmember pool. >> Pool: I support the people that sign up for the two puds in the way Ann had mentioned because those are two very significant items coming before us. We have fourish meetings left. I know that the incoming council will take this issue up and make plans and processes that they want to work with. I am concerned about how we deal with large numbers of people coming in to speak when it has us here until 3:00 and 4:00 in the morning and we have to be able to manage for that. So I am, on your question,

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Kathie, in the place where Steve is. >> Tovo: I think the -- okay, I appreciate that. And I guess it would be interesting to hear across the dais. Some of the other issues that might come up before we -- before this group concludes could be something related to a police contract. Another major issue is the rate policies. So I think for constituents who are interested and engaged in those issues they may record those as funds where they would like more than a minute. And if there are a couple items on the council agenda, if there's something else that they're interested in, in providing input on, they would be forced to split it between the two. So that would be of concern to me. Okay. Well, -- >> Can I add? >> Tovo: Thanks, I would love to hear your thoughts on it. >> Alter: I think that's where I was going earlier so I absolutely agree with you. I am just thinking about

[11:35:05 AM]

items, mayor, that we've led on that are coming up like residential-commercial compatibility that will be on our agenda December 1st. I'm not sure that giving people one minute to cover both of those, if those were the only things they wanted to speak about, comfortable with. We are already planning to go over into the Friday for each of those meetings. So I don't think we allow people to come both both days and speak as we would be just recessing the same meeting. But I do think it's important that we allow people to have more than 30 seconds if they're speaking on three items, you know. There are people

who really do want to come and speak on those issues. >> Mayor Adler: By the way, I do recognize the university of Texas intro to urban studies class that's walked in here today. Sometimes we're discussing really substantive issues.

[11:36:06 AM]

This is a work session in preparation for the council meeting on Thursday, gives us a chance to talk amongst ourselves. You've walked into the middle of a conversation about how we do our meetings. And weighing the benefit of giving everyone the chance to talk in the benefit for how long they would like to speak or if we're going to put limits on the number of times someone can speak or the time they can speak. We've had council meetings go until 4:00 in the morning. That's for the quite fair to everybody too. So those balances is what you've walked into the conversation. Yes, council member vela. >> Vela: I don't support any changes to the current speaker system. It's -- there are practical limitations for the city of one million people with a rich tradition of public testimony. I remember the other -- I can't remember which meeting in particular, but there

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were plenty of folks signed up to speak and I remember there was a request to give them three minutes each, and I remember just quickly doing the math and thinking that that would be like six hours of public testimony or something to that effect. And again, I just don't think that's practical or realistic. Also with the timing, it's also a very difficult situation because on the one hand I think the fixed time gives people a target that they can accommodate their busy lives around. If you want to speak on a general subject matter, 10:00, 12:00 testimony, the 2:00 public hearings, whereas if we say okay, you are going to give people time before each item, we have no idea when those items are going to come up. And it makes it I think very hard to plan to give testimony. You have to commit the entire day to sit there and wait for the item to come up.

[11:38:08 AM]

So having -- the current system has its faults. I'm not sure that we can change it without creating her problems. So for the time being I would keep the system the same. >> Mayor Adler: Councilmember kitchen. >> Kitchen: Yeah, that is the problem we always have. I think one of the ways we've dealt with that is for particular large items or items where they're very significant and a lot of people that want to participate, we always did a time certain so we allow for a time certain opportunity. It was not hard and fast, but it was close enough so that we could then give people an idea of when we might be taking testimony. I think the time certain concepts works pretty well. So again, at this point I'm just suggesting

for particular items that I'm aware of and I'll do that as they come up, but you all might consider going back to

[11:39:09 AM]

time certain. >> Mayor Adler: Okay. Councilmember Ellis. >> Ellis: Do you want me to go first? I will agree. Thank you for bringing up the 4:00 A.M. Meetings. It's very, very hard for us to do our work and for the public to be able to follow along when we're having meetings that late. We have to also be respectful that staff is getting here before the meetings and cleaning up after the meetings and making sure that they're there to answer any questions we have. And I think taking votes at 2:00 A.M., 4:00 A.M., it's just not the way that we do the best policy. I also believe that this is ultimately the job of the mayor to figure out how to get us through the meeting and get all of the items in order and all the items voted on and keep track of everything. So I appreciate all of the input, but I think generally running the meeting is something we have to just let the mayor figure out and whoever is the next mayor

[11:40:10 AM]

may have a completely different opinion, to which I would also care about how they want to run that meeting as well. >> Mayor Adler: Okay. Councilmember tovo. >> Tovo: On a couple of other topics that came up here, one, I would ask the city manager -- the city attorney if we could get an answer about the question that the mayor pro tem raised about I think you said you were thinking about whether allocating more than one minute for applicable topics is in compliance with state law. I think you mentioned a couple of topics coming up where we will likely have questions, maybe even challenges if that continues to be the practice. So I think it would be helpful to hear that legal advice sooner. And I understand and really well because I've heard some really unbelievable things through public communications through the years, so we've had conversations with law about this through the years. I would think we could restrict people from signing up with false names because we do have a policy that people can't come back -- like you can sign up once a

[11:41:11 AM]

month or something like that. So that would seem to be a pretty straightforward deal, like you -- if you've signed up with a false name it's no different, mayor, from signing up -- if I sign up but then I want to give my time to John Smith who comes down to the meeting with me, you typically don't allow that. So I would think the same is true of if you've signed up as John Smith, but your name is really Jane doe -- >> That was my intent to do that. At the meeting we had we had someone sign up with a false name. Whether that was in violation of a policy, I was told no. So I had that person spoke -- had that person spoke in a way where it was a violation, I would not have let that person speak. >> Tovo: I thought we

could clear that up. So are we all pretty solid on that at this point, that if somebody signs up on a false name they can't speak? >> Mayor Adler: Right, it's the person, not the name they right down. >> Tovo: Well, that's helpful to know. I understand you don't always know that obviously until the person is there.

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So it's confusing. If it's -- if it's identified we know it's not allowed. >> Mayor Adler: Correct. >> Tovo: With regard to -- I think the other thing that keeps tripping us up is in the -- with more complicated issues we continue to get into that cycle of if we wanted to give more time to speakers for that particular issue, we're being told that might be a problem. Is that worth our discussing? >> Mayor Adler: Which issue, I'm sorry? >> For example, and councilmember kitchen, I'm not sure if you were suggesting that with the statesman and the Brodie oaks pud that those might be allocated more time or just a time certain? >> Kitchen: I would have to wait until we get closer, but I was thinking of a time certain. >> Tovo: That would be a good thing to resolve if we

[11:43:12 AM]

could have some differential for different speaking times for different issues. It doesn't sound like law is, but I would like to take a look at that issue. And with regard to the statesman, this is on our agenda for Thursday and I did want to have a conversation since we're talking about time management about agreeing on a time certain and also and getting some sense from colleagues. I've been asked if the intent of the council is to take it up on second and third reading or just on second reading. >> We're only posted for second. >> Tovo: Thank you. That clarifies that. >> Mayor Adler: I haven't heard anyone suggest third reading. >> Tovo: How about a time certain? Could we agree to take it up at a particular time? And if so what time would work. I know we have other zoning. Could we set a time of, say, 3:00? >> Mayor Adler: I haven't looked at the agenda that way, but I could certainly do that. And if it was the will to announce at the time that people could come up so they could tune nand see that

[11:44:12 AM]

time as best we could, I think we could accommodate that. >> Tovo: Could we try to get that word out today? That would be helpful. >> Mayor Adler: All right. Anything else on this? We've lost UT. All right. It is -- sorry, yes, councilmember harper-madison. Thank you. >> Harper-madison: Thank you, mayor. I appreciate everybody's contribution to the conversation. I just wanted to weigh in a bit. I think it's most appropriate in my mind's eye to -- there are going to be a lot of new council members so that said I just wonder if it's most appropriate to let that body make the decision. So to councilmember Ellis's point I think in deference to the mayor is part of the process and the mayor should be the point of the

authority and the steward for how we operate the meetings. And I think every mayor would do it differently. I certainly would have a different approach.

[11:45:12 AM]

And I'm certain that we all would. So that said, that's kind of where I am there. I would like to also add to the conversation as a point of consideration, most especially for those who want to take the opportunity to extend more time to our general citizenry to present before council kind of two things. I wonder if there's just generally another opportunity, and this is me just throwing out something I made up in my head. I don't know if this is a possibility. I'm not shogging we do this. I just wonder if for me sometimes it would be helpful to understand the purpose of the presentation of the information. I know that it's been expressed to me that folks say I just wanted to get that on the record. And for folks who just want to get it on the record, who just want it in the archives, who just want some video footage of their

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position on the item being a part of the package, I just wonder if we could use the room that we set up for press conferences and set up a cam Rand let folks make their testimony there if that's the approach people are taking, just getting it on the record as opposed to speaking to the body. Otherwise I'm going to say what most of my -- what several of my colleagues have already said in regards to just the practical application of the time. There's only so much of it and there's only so much we can ask, you know, staff adjacent to the council to do. So that's really a big point of consideration that I hope the makeup of the council takes into consideration and the mayor takes into consideration as part of their stewardship of operating the meeting. I would also like to say, you know, I think it would be appropriate for council members to talk less.

[11:47:13 AM]

And I don't mean to say that in any way to be insulting or to say that any particular person takes up too much space and time. But I do think as we are recalibrating, if that's something we're committing to do as a body, I think it said, when compromise goes well everybody feels like they lost something. So if we need to lose some more council member deliberation time to give some more time to our constituents for their testimony, that to me sounds like more of a reasonable solution to find more time, we're going to have to produce it and the only way for us to do it is for us to take more time. So that's certainly something that I would like to keep in mind. I myself have been guilty of taking too much time, but we could certainly shave off some time. Thank you. >> Mayor Adler: Okay. So we'll move on from this. We'll still call the speakers next week the way we've been calling them. I'll see if I can have a

[11:48:15 AM]

time certain before which we will not raise the issue of the -- of the statesman pud and then try to call it as soon as we can after that period, the identified time. >> Pool: Do we know when the Brodie pud is coming, what agenda that's going to be on? >> Kitchen: We don't know. It would not be before December 1st. It may be December 8th. And it would again be most likely first reading. >> Pool: And I see Rosie nodding her head. >> That's my understanding. >> Mayor Adler: That's pretty official. All right, guys. It's 10 till 12:00. We have one pulled item, which is councilmember tovo's property item, and we have executive session to deal with a copyright issue. Do you want to break now? Do you want to do the real estate ifc and then break and do the executive session?

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What's y'all's preference? >> Kitchen: I would ask councilmember tovo if she has any time constraints? >> Tovo: I don't. I don't, but I want to be sensitive to the fact that I don't know that folks are going to want to come back to discuss one issue and have it be this issue. So perhaps we try to take it up now and see how far we get. >> Mayor Adler: Okay. Let's call up then, councilmember tovo, you pulled this item. >> Tovo: Yes. So there are questions I have for the group. There are concerns that the staff have raised. I think most of them -- most of the concerns that the staff presented last week are really issues that are think are very easily dealt with, but I also just wanted to ask colleagues what questions they may still have. As a few points of clarification to the presentation that the staff

[11:50:18 AM]

did, there are -- one, the staff have indicated that the non-profit lease policy that responds to the audit is now a policy. I have asked for that to be put into the backup. I'll remind colleagues that this sets forward -- council member vela, you asked kind of what -- you raised a question about whether the process -- that we have currently works just with regard to one aspect of leasing. And I will mention the audit that indicated some concerns about how we manage leases. And the audit findings that were done said, among other things, the city lacks central oversight of the leasing processes. I'm going to skip around. The city's current leasing processes do not have the

[11:51:18 AM]

leases with the best idea of the city. It talked multiple times about the need for there's no central oversight or ownership and so we're not managing leasing with a strategic approach, which ultimately compromises the city's ability to pursue left costly alternatives to leasing. Some work has certainly been done in that area, but a more clarified process, that's just one example of where we -- where this resolution would seek to put an umbrella policy on here. Again, I think the non-profit partner piece we can talk about but what I want to do emphasize after the staff presentation last week is there were several comments about there not being flexibility and there is flexibility built into every section of this. I will leave it there. There are significant differences of opinion between whether or not an rfp should be presented to the council. There are concerns about timing that I hope we have an opportunity to talk

[11:52:21 AM]

about. >> Mayor Adler: Okay. Council member vela. >> Vela: Just a few thoughts and I did review the item and reviewed the presentation again, your presentation, councilmember tovo. I -- there are a lot of I think secondary effects to this item that are unknown and potentially very damaging to the city's real estate interest and any potential revenue from those interests. I also see a lot of staff time being lost and that's a cost as well in terms of I see these additional additional layers and procedural layers and bureaucracy and I'm not clear what the effect is going to be. One example would be like, for example, are you using

[11:53:21 AM]

revenue based leases instead O market-based leases? That requires a level of interaction and partnership between the lesser and the lessee that is going to be a very tricky relationship to manage. Those are rarely used. The only times that I can think of when those types of leases are used are for like major shopping centers, kind of major retail outlets in kind of prime locations. And even then they're not the default lease. And then the lessor and the less Z are in a situation where we have to audit each observation the books. If I'm the real estate owner and I'm lessing to Best Buy, I want to see the sales numbers from Best Buy. I'm not just going to trust that they're providing the proper lease payments to me. It's a very complex relationship, and I don't see the city right now set

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up to manage that type of relationship. There are going to be costs involved in hiring that level of expertise to manage that kind of relationship and I'm just not sure what the benefit would be. Again, I'm just taking one example there. Another one that I'm again decently familiar with from my time at workers defense project is the osha requirements and the better builder program. I fully those types of projects for example in the statesman pud on other major construction projects because there's a

marginal cost increase involved there for a major construction project. But I think with one step and to say that every single person has to be osha 10 certified that is a very, very big step to take and will be very difficult for contractors to manage. Construction trades are virtually unregulated in Texas. There's no requirement that you take osha 10. It's a completely voluntary

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thing that very few honestly construction companies do. So that in and of itself, that requirement in and of itself will be an additional cost that a lot of contractors, a, are not going to want to bear so we will lose a pool of contractors who are willing to work with the city and B, will pass along the costs to the city. I think what the city has been doing in terms of a case-by-case basis, analyzing the realistic contracts on a case-by-case basis and taking your most sophisticated firms and having them imposing those requirements on them, I'm fine with. There are a lot of potential problems created when we use this hard and fast rule across an entire category. And then again on the minimum wage requirements, again, that's -- I just think about the auditing. I can sign a contract and say sure. I'll do whatever the city

[11:56:24 AM]

says. Who is going to go back and audit that? Who is going to look at the payroll stubs and make sure that that is effective that that's happening. Again, I think there's going to be a lot of expenses and complications on the city's side that are going to take a lot of staff time and raise a lot of costs and I'm not sure what the benefit that we're going to get from all of that is. >> Mayor Adler: Councilmember pool. >> Pool: I see Ms. Truelove is here and I was wondering if we could invite staff to come up and kind of respond. We heard from Rodney last time, but I'd like to hear from Ms. Truelove. >> Mayor Adler: I think we can. Why don't you come up. >> Pool: Mr. Van eenoo, are you here as well? It would be great to get your counsel on the matter.

[11:57:24 AM]

Thanks. And generally if you could weigh in I know that we've heard from acm Gonzalez, but not from our cfo or from our head of planning and housing. >> Thank you, council member. And just I think part of having acm Gonzalez at the request of the mayor from the last council meeting was coordinating among many departments. I mean, we have been working through this particular resolution I don't know how many specific departments have been involved, but there has been a lot of coordination and communication. So some of the concerns or feedback are ways in which staff is really reflective collectively of the work among those departments. >> Thank you. >> Kitchen: Mayor, before

[11:58:25 AM]

they speak, can I ask a quick question they can incorporate into what they're saying? >> Pool: First I would just like to have a general overview from the staff on what their take is -- >> Kitchen: And what I want to add is as you do that, I would like to turn this conversation to what can be done. We've had a lot of conversation about what can't be done. And councilmember tovo is trying to solve for certain problems, so you guys are very creative. I'd like to hear also how you would propose solving for those problems. >> Absolutely. I'd be glad to respond to that once we respond to councilmember pool's question. The presentation that I provided last week was a consolidated list of concerns from the various departments who have looked at this resolution. They range of course from finance, from the real estate division and finance, from our economic development department, housing and planning department, numerous other

[11:59:26 AM]

city departments, including our utilities, as well as the aviation department and we really just highlighted the top five. We wanted to limit it to five in respect to council's time. There are other staff concerns that we have shared via the memo that was released Thursday morning, but it does represent a consolidated list of department concerns. With that, I will turn it over to Ed and Rosie if they have anything else to add. Oh, and Mr. Gates. Yes. And then I will conclude with a response to council member kitchen's question. >> Go ahead, Ed. >> Thank you, mayor and council. Chief financial officer. I am joined virtually by Michael

[12:00:27 PM]

Gates, our real estate services officer, James Scarborough, our chief procurement officer is also in the building and available if there's questions. Departments, concerns are really in those two areas, and we've had great conversations with council member tovo and her staff about these concerns, and resolutions made forward progress in attempting to address some of them. We've continued to have concerns with how this would impact the timeline of certain real estate transactions, while the policy objectives of earlier council input and collaboration amongst agencies we like, we support, but there are concerns just about how long some of these things could take. And I know you've tried to make some efforts to streamline those. But, you know, looking at a project, and they kind of pick your project like the convention center, which is already, you know, a project that we've been

[12:01:28 PM]

spending a lot of time on trying to get to that point where we can release the rfq. I think this resolution would call for us to work to analyze all of our department's facility needs, to look for opportunities to bring those facility needs into the convention center. After that work was done, we would need to collaborate across agencies, Travis county, the school districts, central health, not for profit agencies. So I think these things will take a lot of time. We get the policy objectives. I think, you know, we'd like to continue working on and see if there's a way we can achieve the policy objectives in a manner that doesn't create as much of a potential drag on our real estate transactions process. So that's on the real estate side. On the solicitation side, in regards to some of the changes that this would require in terms

[12:02:29 PM]

of how we go about circulating and gathering council feedback on our rfqs and rfps, we do have some concerns in regards to our anti-lobbying ordinances and providing rfqs in advance of that in a public manner would put them outside of our current anti-lobbying ordinances. So that is one concern as well, just in regards to how we maintain control. To the rfq and maintain the integrity of the solicitation process in complying with existing anti-lobbying requirements. >> Good morning. Rosie trulo. Mandy has been our primary person working on this and she is on the webex link. Our concern continues to be around requiring that even as a baseline target goal, requiring 85% income restricted housing on

[12:03:34 PM]

city-owned property. Requiring this percentage of income-restricted units could potentially defer projects that would deliver perhaps a lower percentage of affordable units but a higher net number of units, especially requiring a minimum percentage of income-restricted units in solicitations that incorporate housing may narrow the number and diversity of respondents to solicitations and preclude financial availability of those developments. So, we're -- when we have any kind of a baseline percentage for income restricted affordable housing, that's going to be a concern. I know that there's been kind of referring back to some comments that Mandy made about health south, I think if the Austin housing finance corporation were doing this solicitation as housing, you would see perhaps 85% income-restricted affordable housing. But that's the only community benefit that we're going in that particular instance. So when you have these larger

[12:04:34 PM]

city-owned properties or city-owned solicitations that are going to facility multiple community benefits, we have to recognize the flexibility there, and we would not recommend any kind of a target or baseline percentage there. I would ask, since I see Mandy's square, if there's anything she wants to add. Mandy? Nothing to add on top of that. I think that was our major concern as planning staff and Austin housing

finance corporation, recognizing that this resolution does not specifically call out Austin housing finance corporation projects, but recognizing that ahfc developments are unique and separate from a city of Austin solicitation, which really would be site-specific, that would be community context under consideration, and not every

[12:05:34 PM]

project would be -- would have a primary income restricted affordable housing target. >> Mike Gates is also on the line. Mike, is there anything further that you wanted to add? >> I'll speak to the revenue sharing provision that council member Vela Teed up quite nicely, the concerns regarding those. So, percentage leases, how those are structured are that, you know, you say the base rate is \$10,000 a month. If it's going to be a revenue sharing or percentage lease, you would actually negotiate a discount to the base rate. So rather than \$10,000 a month, you'd have it at \$8,000 a month. And then you'd negotiate what's called a break point. When somebody sails over that break point, that percentage, in addition to that break point, would then be the additional revenue the city would capture. They introduced the audit component that council member Vela mentioned, and it very well

[12:06:35 PM]

could be the case that the staff time taken -- that it takes to audit these things, we could actually lose in these type of leases. Also, our local market doesn't support percentage leases as a regular kind of negotiated term. Base rate rental agreements are what we're seeing in the market. We alluded to the fact that revenue sharing leases are more supported by the market when we actually have the properties appraised. So, rather than being a prescriptive, you know, every lease has to be a percentage lease, having some flexibility to see what the market is indicating to us, and then exploring that, it's just about making us more competitive in the market. With respect to the benefits, the better builder, the living wage, the minority-owned, women-owned business

[12:07:35 PM]

requirements, those community benefits -- our appraisers would not be able to assess a value for those. And so when we would bring forth recommendations to council, we'd bring back what the market rate would be, but we'd expect the recommended rental rate for a particular entity would be completely untethered from that appraisal, because the appraiser is not going to be able to determine what those community benefits to value those. So there would be some concern there that could staff make a good judgment, is this a good deal for the city? If we've got that overhead associated with that particular lease agreement. So, those are some of the concerns with respect to the leasing impact, given that particular provision in the ifc. >> Thank you, Michael. I do want to recommend Veronica is on the line.

She couldn't be in-person due to a family healthcare matter, but she doesn't have anything further to add. And with that, I will transition to respond to council member kitchen's question.

[12:08:38 PM]

Council member kitchen -- >> Mayor Adler: Before you go to -- if we could speak to the question of land banking and hotels, does that impact that at all? >> What was the question? >> Mayor Adler: Does this impact land banking or hotel purchases? >> Oh, I'll defer to Mike, but you may recall, mayor, that one of the concerns that was in the slide presentation last week was the ability to acquire property through earnest money contract without first seeking council input. We've done that several times where we were able to secure property, and I listed St. John's as examples, where our real estate office was contacted by these property owners, that these properties would be on market. So in advance of them hitting the market, we were offered a first strike, if you will, and we were able to do that through an earnest money contract that falls under the city manager's purview. And so I believe we did that with some of the hotels as well. And then we of course subsequently held a council

[12:09:38 PM]

conversation to determine whether or not council desired to purchase those properties was there. So from the hotel perspective, it certainly does. I'll defer to Ed and Mike with regard to land banking as well. >> But from Austin county housing -- >> Kitchen: Could I speak to that, please? >> Mayor Adler: I'd like to hear them speak to it. >> Kitchen: Can I respond? Because I think they're misunderstanding what the intent is. >> Please go ahead. >> From Austin housing finance corporation, which is how we facilitate expenditure of the affordable housing bonds, this resolution does not apply. But are oftentimes the hotel acquisition started on the city side. So it would apply. >> Mayor Adler: Okay. Thank you. >> Kitchen: Mayor, could I please speak to that? >> Mayor Adler: We have to answer your first question first. >> Kitchen: But he hasn't -- I mean -- >> And I would recognize that the acquisition the council member did remove that, say verbally that that phrase would be removed last week.

[12:10:40 PM]

What I'm speaking to is the current resolution that's posted. >> Kitchen: But there's already been an amendment that removes the hotel. So, mayor, I'm sorry to interrupt, but I just -- I don't want to continue with information that's not accurate about what's in the -- that has been taken out, and council member tovo made that very specific. That's not the land banking, but that is the hotel. >> Tovo: And let me say we heard the concern early on. We made an adjustment to that that we thought addressed it to make it clear that acquisitions were not a concern. And when it came up again last week, I said we'll

make another edit. But this is -- this is not intended to slow down potential acquisitions. And we have tried now in three or four iterations to remove that concern. We've apparently not done it

[12:11:41 PM]

successfully. So I think it might be helpful if we kind of raise up the conversation about what the intent is, the kind of very specific feedback, and we drill down into staff concerns about that feedback after I've already said that wasn't the intent. It's just not getting us to kind of a productive outcome. >> Mayor Adler: So part of it is asking questions that are coming to me. Because the posted version doesn't exclude that. So if someone is trying to catch up to our conversation, wouldn't know that that was excluded because it's not in the posted version. But if you could post just a list -- not even word changes, but just a list of the changes that you intend to make to the posted version, so that people would know - - would be able to refer to something and see it, maybe that might help the question. >> Tovo: The other thing I have done too is added in language about the specific hotel, because that kept arising.

[12:12:41 PM]

Okay. I know council member kitchen had a question. I do want to make sure we talk about the priorities and the benefits, to get to what council member vela was saying, and then to kind of raise it up to what we are trying to accomplish here. >> Mayor Adler: I just don't want to lose sight of -- it would be really helpful if you would say, I've heard people say something and I'm making these ten changes. That would help people. >> Tovo: We'll do that. >> Mayor Adler: Thank you. >> Mayor Adler: I think now responding to the question that council member kitchen asked. >> Thank you. The concerns that staff is raising are in no way an attempt to disregard the policy setting that is here. We recognize that that is council's role. And we want to always help with that. The way that this started out was with a very large document, and we have been technically in response mode since that time.

[12:13:42 PM]

We would appreciate an opportunity to do just what you'd mentioned, which is take a step back, and listen from council as to the policy concerns that you have, the values that you want embedded in a policy, what are those overarching themes that you believe need to be addressed in a real estate policy. We would appreciate an opportunity to take a draft to attempt to meet council concerns, in a way that we are comfortable with addressing. Right now, the mode that we've been operating under is there's a draft, we respond to the draft, there's another draft, we respond to it, and to your point, the versions that have come forward haven't yet addressed the concerns that we have. And so, the mayor of course last week had proffered that we offer language to the resolution that does address our concerns. We think that taking that a step further and actually drafting a

[12:14:43 PM]

policy that we believe meets the intent and meets the goals and meets the outcome and meets the values might be a good outcome as well. >> Tovo: And I think that there's an opportunity to do that, because in multiple places, this actually tees up further work. Let me give you an example. I talked about the audit, which was extremely, extremely critical of how we handle our leases in that it's not strategic, it's not aimed at really meeting community needs, and frankly, the process for which we use leases for non-profits is not transparent with very limited accountability back. I know the staff have done an internal policy that's never been shared with the council. So, I requested it and got it from you this morning. But it is -- this resolution is teeing up that policy work. In places where it's not teeing up the policy work, it's actually drafting a -- it's drafting some policy considerations for future, those are in areas where we have in

[12:15:43 PM]

the past issued significant policy recommendations and we don't yet have a change to that policy. So I will take a step back and try to figure out. But, you know, if we go through, say, the convention center, for example, we're almost familiar with the most recent iteration of it. But I think it's worth considering that we've had council conversations and actions on the convention center expansion multiple times before. We had a whole designed convention center frankly that was -- had lots of community meetings, and when it came to a vote, there was a significant community uprising who said, we don't want just a bigger box. That's not going to improve that area. And now we have restarted the expansion project yet again. To me, that's an example of the timing question. I'm very sensitive to what you're saying about the timing. What I'm trying to effect is a process outline with plenty of accessibility that provides for

[12:16:44 PM]

community input consistently and council input consistently. And a laying out of baseline requirements that will be considered. You know, what we heard last time, and a touch point with council to make sure that those priorities are clearly reflected in the solicitation that's going out. And I would welcome everyone around this table's input in how we can take what I've laid out here and craft a process that meets those goals. Because what we have otherwise is sometimes there's community input in meetings, as there were in Ryan drive. Sometimes there is none, as there was with health south. Sometimes there are considerations on including things in an rfp, and sometimes there are not. And when the proposals come back to us without those baseline requirements, we can't make them requirements anymore. And so, council member vela, there are two things that I think have arisen here that I want to explore. One is the 85% -- director

[12:17:46 PM]

truelove, you said that was only if Austin housing and finance corporation is undertaking a project. There's not a council conversation up front about who is going to be -- who is going to do which projects. I don't recall having a conversation about Maynor and whether that was going to be economic development or the Austin housing and finance corporation. That made a big difference. We got 93% affordable housing because of that choice. What I'm trying to instill is a process that allows those conversations to take place with, one, the economic development corporation, and two, with the council up front, so we can help say, these are going to be priorities that the council has for these tracts. Now, maybe I was trying to come up with a list based with my co-sponsors on priorities that I thought that we -- you know, because they come up on all of these, as one-off negotiations, I thought they were things that

[12:18:47 PM]

we wanted to at least begin with thinking about. Council member vela, you seem to be expressing some concerns with better builder being a part of city projects that I just wasn't aware of, so thank you for raising those. I don't know how the rest of my colleagues feel about that. But I know -- you know, I know we negotiate for that on private developments. And so, I want to make sure that we're holding ourselves as a city to the same kind of standards. Having said that, in the priorities section, I really appreciate you reading this closely enough that you can point to things that are of concern. That's very, very helpful. Having said that, there's also language in here that says at every point, alternate recommendations. If the manager recommends diverging from these standards or desires to achieve the proposed results through alternative methods, the manager must provide justification and financial analysis. So at every one of these sections, there's built in that kind of flexibility.

[12:19:47 PM]

Revenue sharing is something we do with our concessions on park land. And so, it's certainly I think worth the conversation about whether we extend that to our leases on other property. It may be that that doesn't -- that that's more complicated. But we do have a model at the city for doing those concessions. I take your point that it may be too costly to implement, but it certainly should be in the mix. But maybe that's the language change that would be helpful, to say this should be a consideration, whether or not to do a revenue share, but not necessarily a baseline requirement. Would that help, council member vela? >> Vela: When we talk about the revenue sharing -- and again, I'm the newest council member -- the Barton springs is the only one that comes to mind. Are there other lessees that are doing revenue sharing?

[12:20:48 PM]

>> Tovo: I think most of them on park land do. I think most of them have a revenue. >> I'll defer to Mike Gates, but I believe ibia has revenue sharing. But I'll defer to Mike Gates. And typically, what we're talking about is those that are retail, not necessarily office tenants or non-profits, for sure. But more of the retail tenants. Mike, is there anything else? >> Tovo: And this was not designed to apply to non-profits, to be clear. >> We are going to disagree with that, the way that it reads. The language does say that -- >> Tovo: Gotcha. The intent is not to extend it to non-profits. >> And I can confirm that ibi a&p ard have a revenue sharing. But for the seven retail spaces, we don't have any current leases with the percentage that are [indiscernible] Spaces. >> And if I may, I mean, those are both -- I'm sorry, council member. Those are captive audiences.

[12:21:48 PM]

You know, those are not kind of just the retail space, for example, right next door to here, where someone can rent in city hall, or they can go to one of the vacant store fronts a block away, and rent from someone else. So I just don't think that using, for example, the Barton springs concession stand or ibia are relevant to most of the city's real estate holdings. >> Tovo: Okay. That's an interesting and useful point. Thank you for that. I'll give that some thought. Back to the benefits. So, this reminds me a little bit of the conversation that we had about the chapter 380 agreements where we were one off trying to, as they came forward before council, asking folks to have a prevailing wage, have safe standards for workers, and the council stepped back and put some of those qualifications into the guidelines. So this is an attempt to kind of

[12:22:49 PM]

do the same, to have some of those priorities be part of the ordinary course of thought, rather than having them happen at the end, trying to put them into an rfq that didn't require them. Trying to put them into an agreement where the rfp didn't require them. There may be a threshold question about whether these are goals we want to see on our city property. >> Pool: I was thinking about the work that we did with the stakeholders in crestview on the Ryan drive project, and we got, and that's city-owned land, and we are looking at a 60% -- let me make sure I get these numbers right. 60% of the total housing be at

[12:23:50 PM]

an affordable price, and at the 60% mfi, and that's on land that we own and that's the best we were able to do there. I think that the section, council member, on housing and the 85%, have you stipulated what the mfi rate is on that? >> Tovo: I have. It says 85% with family size units. This, again, is just on land we own. Deep levels of affordability, and it doesn't stipulate it, but it says rental rates based on 50%. But just to note, there is also language in this section as there have been in every other thing. It says if the manager recommends diverging, provide justification. And so, it could be that justification will be -- you know, we recommend 60% here. My intent here is to try to

[12:24:52 PM]

drive us I don't -- I think green right next door had zero, and I think what we've been able to achieve in some of our others is more like 20%, except for the Austin housing and finance, which Mandy had stated they look for 85%. So that's where that number came from. But we've actually gotten as low as 93. >> Pool: Thanks for that. >> Tovo: So there may be another number, but there is language that says if you recommend diverging, let us know why. >> Pool: The part that caught my eye, and I think it's caught others' eye, that gives me great pause -- and I'm somebody who would like to see higher percentages of affordable housing in the properties that we're able to negotiate that, and I've been asking for something higher than 10% since the day I came to this dais, and it's eight years later, and it's still not possible. We can't even get 25%, although I'm really happy with the 60% in this unusual case on Ryan drive. And really proud of that. 85% of the units on any parcel

[12:25:58 PM]

is super high. As you say, there are some release valves, but what people will focus on, what I focused on was the 85%. I don't think it's realistic. I think as Rosie spoke to earlier today, that we lose some other community benefits. Much as I wish it were different, we don't have inclusionary zoning in this state, where we -- it's always a carrot and a stick. And the requirements, the developers and the agents will walk away from the projects, I'm pretty well convinced of that. So, if 85% of the housing units have to be income-restricted, we stand to lose some of the community benefits that the community is asking for, and we would have difficulties in getting developers to bid on these and they would end up not being affordable. I wish the world were different, but I have -- I wish the world were different, but the 85% to

[12:27:00 PM]

me is outside the bounds of what we can ask for. I think that the 60 that we got on Ryan drive was the max. And that's pretty good. I think we should be celebrating that. And trying to get more like that. I don't think this gets us there. Mayor, I just would say that I continue to be reluctant and highly unlikely

to change my opposition to this item when it comes on Thursday, and high feel like that is the general sense around the dais here today. I think we have talked about this a whole lot. I think staff have tried really hard to give alternatives. I know that council member tovo has made adjustments to her initial resolution. I'm still having difficulty keeping up with all the changes. And this is not the main item that I've been pursuing in the last couple weeks. Most of my attention has been

[12:28:04 PM]

focused on Austin energy. But that's where I am with this, and we can continue talking about it here today. I don't know if we have some other things you want to accomplish. But I feel like the dais is probably pretty settled on the feeling on whether to -- >> Tovo: Well, I really hope that's not the case. >> Mayor Adler: Let her finish talking. >> Pool: I do have the sense that the dais is reluctant to continue the conversation and to move this forward, or to postpone it. But I would like us to find an end point for the conversation today so that we can continue on with the other items that we may have in front of us. >> Mayor Adler: Okay. >> Pool: Thank you. >> Mayor Adler: Let's give everybody who wants to one more chance to talk. Council member kitchen. >> Kitchen: I'm fine with an end point. We do need to know when we're going to stop talking. But I think we're engaged in an exercise to find something that

[12:29:07 PM]

works. I think that the problems that council member tovo are trying to solve for are important policy issues. I think the question of what we asked for, from an affordable housing standpoint for public land is an important policy piece. I think the question about the extent on public land that we asked for worker protections like we've done when we reach out to people is important. So, I'm not ready to -- I am not ready to say that this is an issue we don't want to address. I am happy to work with council member tovo and with staff to see -- just to sit down and see if we can very expeditiously just walk through all the issues. But I am not declaring this dead. I think that it is very important policy issues here that need to be addressed. >> Tovo: Mayor.

[12:30:08 PM]

>> Mayor Adler: You can go now. It's your item. If now is when you want to talk. Council member Kelly. >> Kelly: I'm not ready to support this item either. I know that a lot of time has been in it for you and your staff, and I think that that's very important work that you're trying to accomplish, but until the staff's concerns are resolved, we're at a point where staff is comfortable with it and it's not going to be too much of an impediment to the work that they're trying to accomplish, I can't support it. >> Mayor Adler: I continue to believe that there are experiences that we've had over the last eight years that if we shared them or highlighted them, would be valuable to staff. I don't know the best way to do that yet.

And I'm concerned of some of the things that are prescriptive in their statement, like the 85%, because I think focusing less on the percentage and the number of units is generally a better way to describe that. And for several of the prescriptive kinds of things.

[12:31:09 PM]

Part of it that I'm wrestling with is -- council member tovo puts in this -- I'm putting these things down, but you don't have to do any of these things if there's a reason not to. Just come back and tell us, this is not the appropriate place to do that. Which is what you would want it to say so that you're not bound to do it by something that's prescriptive. The part I'm wrestling with is one of my experiences over the last eight years is recognizing the reality of the situation, which is when council says that, that's not how staff reads that as a practical matter. So, council says, we want to have childcare in all developments, which is a laudable thing. We need childcare. But yet, we've had some instances where it wasn't a requirement, it was a suggestion, and when it didn't have it, then staff gets caught

[12:32:14 PM]

up in adversarial kind of relationship with council, when staff determined it didn't fit or didn't propose it. That wasn't a requirement that it be there. It was just, hey, consider this, it didn't go that direction. But what results then is a practical matter, then is staff that's reluctant to bring things back to council -- my feeling is almost over time that staff feels like it's going to be -- feeling like it didn't do its job because it couldn't return back with all of the things that it was that council wanted to see in it. So there's that practical measure, where we don't get deals, or potentially lose deals, because it doesn't contain all the things that were not required, but the things that were on their wish list. And I don't know how to work through that. And it may be that we need to be

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more specific about what the policy goals are and to say to staff, is there a better way for us to drive consideration. So, I don't know what the answer to that practical thing is, but that's also one of my experiences over the last eight years. I'm wrestling with the one about council approval prior to negotiation, and issuing rfps. At the same time, I want to have staff involvement. In most cases, that works for us. We can point to some instances where it didn't. We can point to some instances where the staff got involved and then the process went off the track because the staff was now taking control -- the council is now taking control of the process. That might not have been best to be one that was led by the council. But at the same time, I'm aware of situations where it's been really helpful to get the council back in and to make that work and trying to parse those

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two situations given the first thing I said is there. Because early council input doesn't necessarily ensure success. There's got to be some more structured way or system or conversation or question or something, I think, that is associated with that. But the other things like living wage, we absolutely want a living wage, because one of the ways that we do a living -- when we do a living wage and we require our contractors to do a living wage, we have the ability to make our tenants do a living wage, all those things help our entire community drive to a living wage. But at the same time, those are all forced choices. You can't require a tenant to do a living wage when their industry is not doing that and expect them also to pay market rent. But I'm willing to take less rent in order for that. So a policy that says when you're looking at this, if there's a chance to get living wage in exchange for less than

[12:35:22 PM]

market rent, maybe that is a policy that is helpful, recognizing that even that may not be the appropriate thing to do in all circumstances. But I'm not sure that -- my sense is that in reading this, staff doesn't think that it has the freedom or the ability without facing a situation that it is loathe to put itself into to be able to respond and deliver the same thing. Argument could be made with childcare facilities. Finding temporary uses for vacancies may or may not be a good idea. We differed on that with health south in terms of locking in to a piece of property. So I'm not sure I'm quite ready to agree to a policy on that. I can state the policy that says, if we have a vacancy, but please make sure you don't otherwise encumber it so as to

[12:36:23 PM]

lose future options and flexibility for staff. So council member, I'll endeavor to try to see if there are other things like that where there might be, you know, just a base disagreement on some of the policy issues requiring zoning beforehand, before that goes. I mean, I can see -- that I think is a really interesting conversation, especially with respect to lands that we don't own, that are owned by other governmental entities, they can be put up for sale, where our zoning may only count in the event of a sale to nonpublic use. But I think that's an important question. Probably a broader question. But recognizing that is not something that we should be handling on an ad hoc basis.

[12:37:25 PM]

There should be staff attention to that question. I agree with 1,000%. So I'm not sure I'm necessarily onboard with the answer, but saying we have felt on this dais that those things come back to us without kind of a policy yet. And I think that's more of the situation. So it's the things that we just seem to run into that feel like they're new every time we run into them. I'm not sure I'm with you in terms of all the solutions or the remedies. But yes, on so many of the questions. So I'm going to take another look at this myself to see if there's a place that this dais could get to that said please don't put future councils into a place where it fails ad hoc. We're not going to necessarily recommend to you what the answer is, but you need to come back to us, either with an answer, or with a process to be able to get that answer, or for some uniform approach is, so that it doesn't feel like it's new every time it gets there, and I hope that that's helpful. >> Tovo: Yeah, it is.

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I think that's very helpful. And so for some of the questions, the co-sponsor group has proposed potential solutions, but it's clear that it's being interpreted as a mandate rather than as a guideline. And so I think some clarification to the language might help. In some of those, mayor, maybe you and I can sit together. In some of those, we maybe need to back up to the question that needs an answer, and just say, come back to us with the policy. But I just -- you know, council member pool, with all due respect, I could spend the next two hours talking about some of the issues that are giving rise to this. I think these are questions about how we're using our public land. And it's of substantial concern to the community and has been for decades, and standardizing some of these practices is going to be of great value. So, I'll leave it there.

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>> Mayor Adler: Okay. >> Tovo: I'll figure out how to, maybe with your help and the help of the other co-sponsors, how to set up the conversations in places where we're not sure there's a consensus. But I really think that we need to carve out a process that allows us to more consistently get those benefits. I'm going to say one more example. I have asked for the last maybe nine months, maybe longer, to see if the council can review the convention center rfp before it gets distributed. This is something that as I mentioned we have had starts and stops for the last 12 years on the convention center expansion. And this council has invested a lot of time and money in hiring a consultant, in hiring UT to really help us rethink that area of town. And knew the convention center expansion rfp that's going to be on the street needs to capture those. I have gone round and round and round, and I appreciate all the staff's work. There was just confusion about it. First, it was they were going to

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share it. Purchasing said that's not our practice. Then there was conversations about whether we could do it in executive session. And finally, on Thursday, I got the answer back. Thank you, assistant city manager. Saying, no, we can have a conversation about what might be in or what will be in the rfp, but they will not share the rfp with council members absent policy direction. So, if our council or any other council ever wants to review an rfp or an rfq to have that touch point to see whether the priorities we've set are encapsulated in it, we cannot do that, you will not be able to do that, generations of councils will not be able to do that absent a policy direction that affords that opportunity. So, at a minimum, it would be good just to have an up or down vote on whether or not the council ever wants to have that opportunity so that other council members don't spend nine months trying to get the answer to that question. And I will say, I'm not certain that there aren't council

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members who have seen rfps in the past, frankly. So, having a consistent policy is helpful. But, thank you for all the -- thank you, council member vela and Kelly and pool and mayor. I think you have pointed to some places where we can get to consensus and, you know, I'd love to be done with this, too, but I think there are just too many things I've seen on this council that I think all our accumulated wisdom can really set a path for, for the best use of our public land, which is an extraordinary asset that the city has. So I'm going to keep on. >> If I could just solve for one clarification, I'd be glad to circulate my email to all the council members. Yes, my response was we could not publicly share the rfq with all of council. That's not our practice. However, individual, should you or your policy aides desire to see the draft rfq, we are glad to share that with you. We only ask that you sign a nondisclosure agreement. So that is currently available for every council member and

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every policy aide of yours. Our response was that we couldn't share it publicly because it's not our best practice, and once we share it publicly, we can't control the document. >> Mayor Adler: Got it. Are we ready -- >> Alter: I'm going to be brief because I'm in a quorum with council member tovo and I can speak to her, but I do want to just speak in favor of the value of capturing the collective wisdom that we have with council member tovo and the mayor, council member kitchen, myself. Council member Fuentes, who are on as co-sponsors, that, you know, a lot of time and effort has gone into this resolution and I think it reflects a challenge that we have in order to be able to proceed effectively, creatively, and in line with our values when we deal with issues dealing with public land. And I don't think we should take those concerns lightly.

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They have come up over and over and over again. We may not have landed on the solutions, but the problems are going to remain, and I don't think it's sufficient for us to simply ignore the questions and the challenges that are being raised because they will come back again, and we will spend more and more time on that. I think the intention behind this was to spend less time later by having clearer policies. I will say I have -- it's not an rfp, but it's part of a negotiation of our land issue, and I still haven't seen it and I've been told I need an nda and no one's giving me the nda to sign. And so, that's a problem that we have for things that happen where we need to have a better process. And city manager, this is a call from five council members to say something's not working right here, something can work better. We've had some great opportunities with our public land but we have a

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responsibility to do better and we have to pay attention to the underlying policies and approaches, because they feed into our successes. >> Mayor Adler: Okay. All right. I think that's this topic. Thank you all for coming up. We have an executive session on one item, a copyright matter. I think it's going to be short, no? So, let's do that real fast, and then we're done for the day. Council member harper-madison, do you want us to go virtual to get to this executive session? >> Harper-madison: Yes, please. I hoped to join you all in person, but it's not going to materialize that way. So, thank you. >> Mayor Adler: Not a problem. So, council, we'll now go into closed session to take up one item, city council will discuss legal issues related to e2, which is a copyright matter. E1 has been withdrawn for today. We anticipate it could be part of executive session on Thursday. Without objection, we'll go into executive session virtually, and I will come back out and close

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this meeting when that meeting is over. The time is 12:45.

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[Executive session]

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. >> Mayor Adler: Ready? All right. We're out of closed session. In closed session we discussed legal issues related to item e2, copyright matter. And with that the city of Austin work session here on November 1st, 2022 is over and adjourned at 1:26. Thank you.