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Clerk

In the Third Court of Appeals

IN RE NELSON LINDER, §
RELATOR §

**EMERGENCY ORIGINAL PETITION FOR
WRIT OF MANDAMUS**

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IN THE INTEREST OF TIME, ORAL ARGUMENT NOT REQUESTED

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STATEMENT ON ORAL ARGUMENT

Due to the imminent deadline for possibly correcting the City of Austin ballot language on a citizen initiated petition (the Travis County Clerk must send it to the printer by September 5, 2019), Relator has not requested oral argument. However, if oral argument is deemed appropriate, Relators ask to be included.

STATEMENT OF THE CASE

The City of Austin Clerk certified on July 26, 2019 a citizen-initiated petition. (TAB A)(Petition). It contains two separate, chief features: 1) voter approval is required before the City government may spend local hotel occupancy taxes on a significant expansion of a convention center facility; and 2) Austin's hotel occupancy tax revenues are reprioritized in favor of cultural, historic and heritage tourism and other statutorily allowed purposes with a limit on what proportion can be spent in support of convention center construction and operations.

Two weeks later, the Austin City Council prescribed the ballot language in a vote taken by the council at approximately 3:00 in the morning last Friday, August 9. (TAB B, Council Ballot Language). The Council's ballot language is:

Shall an ordinance be adopted that limits, beyond existing limits in state statute and city ordinance, the use of Austin's Hotel Occupancy Tax revenue, including the amount of Hotel Occupancy Tax revenue that may be used to construct, operate, maintain or promote the Austin Convention Center; requires any private third-party entity managing such funds to comply with open meetings and public information laws applicable to the city; and requires voter approval for Convention Center improvements or expansions of more than \$20,000,000 *at an election for which the city must pay.*

(emphasis added). Relator brings this action in mandamus maintaining that this ballot language does not comply in two respects with the Texas Supreme Court's common law test in *Dacus v. Parker*, 466 S.W.3d 820 (Tex. 2015). First, the ballot language states that that the City must pay for the cost of a future convention center expansion election. This is language is extraneous and not in the petition; it also is false and misleading: there is no additional cost to the City for any ballot measure in November of even-numbered years because the City holds council elections then anyway). Second, the ballot language fails to inform the voters of one of two chief features of the initiative, which is that funds would be redirected from the convention center to cultural, arts and other authorized tourism-related programs. We ask for an emergency mandamus directing the City and City Council to comply with the requirements set forth in *Dacus*.

STATEMENT OF JURISDICTION

This Court has jurisdiction to issue writs of mandamus under Texas Government Code section 22.221; Tex. Election Code section 273.061; and Rule 52 of the Texas Rules of Appellate Procedure. No genuine issues of material fact exist that would divest this Court of mandamus jurisdiction. The written ballot language either violates the *Dacus* standard in describing the certified petition initiative or it does not. The deadline according to the Travis County Clerk (who is conducting the November 2019 city and state elections) is at the latest September 5,

2019 to receive final ballot language from the City of Austin for going to the printer.
See In re Williams, 470 S.W.3d 819, 821 (Tex. 2015).

ISSUE PRESENTED

Did the Austin City Council violate its ministerial duty under *Dacus* by including ballot language that is extraneous and false and misleading and that excludes an essential chief feature of the initiative?

STATEMENT OF FACTS

Relator, Nelson Linder (the head of the local chapter of the NAACP), and approximately 31,907 other Austin registered voters this summer signed the initiative petition in question. (TAB C, City Clerk's Petition Certification). It calls for voter approval before spending local hotel occupancy taxes on a significant convention center expansion, and separately it redirects such taxes from convention center expenditures to cultural, arts, historic, and other authorized statutory purposes for tourism. See Texas Tax Code, Section 351.101(b), 351.110.

The convention center currently accounts for more than 72% of Austin's hotel occupancy tax expenditures; the initiative would limit the convention to no more than 34% of the funds. (TABs A and D, City of Austin 2020 Budget). This would free up hundreds of millions of dollars over ten years for cultural, historic and other tourism, because Austin's hotel occupancy tax currently raises about *\$100 million a year (a billion dollars over ten years)*. (TAB D). Other major Texas cities (such as

Houston) spend less than 34% of their hotel occupancy tax on convention centers. (TAB E, Comptroller Fiscal Notes on Texas Convention Centers (August 2018)). Petition signers sought an election to require voters to approve any significant convention center expansion, so citizens would have a voice in whether to expand the convention center. In addition, regardless of voter approval of a convention center, petition signers sought to reprioritize hotel occupancy tax revenue to cultural, historic, and other authorized purposes. (The Council is proposing to spend a projected \$1.2 billion on a convention center expansion (TAB F, Council Resolution May 23, 2019)). Because of a bracketed statutory amendment applying to “Central Municipalities,” Austin and Ft. Worth are the only cities whose voters are not required to approve debt for a convention center expansion. Tex. Tax Code, Sections, 351.001(a)(2); 351.1065. Austin petition signers want to limit any convention center’s use of HOT tax to 34% of hotel occupancy tax revenue, which is in line with several other major Texas cities) and redirect hundreds of millions of dollars for cultural and other tourism over a decade.

The Austin City Clerk certified the petition as being sufficient under requirements of the Austin City Charter, art. IV, section 1, allowing the power of initiative. (TAB C). Last Friday morning, August 9, 2019, starting at 2:13 a.m., City Council considered item 17 (out of 149 agenda items) to place the initiative on the November 2019 election ballot as Proposition B as required by law. (Tab G, Closed

Captioned Transcript by City of Austin for Council hearing on August 9, 2019 on item17) (Also official City of Austin videotape link starts at 2:13 am, <http://austintx.swagit.com/play/08082019-683/0/>) The Council’s proposed ordinance and back-up material contained no proposed ballot language for public input or review. (Tab H, Council Backup on Item 17, Council Meeting August 8-9, 2019, page 1, part 2). Bill Bunch stood up to speak, and asked the Council to use as ballot language the straightforward, neutral language that petition signers had specifically requested at the top of the petition: “We, the undersigned registered voters of the City of Austin, petition the adoption of the following citizen-initiated ordinance: *The caption of the petitioned ordinance, which shall be used verbatim as the ballot language, reads as follows...*” (emphasis added).

This caption ballot language is:

A petitioned ordinance prioritizing the use of Austin’s hotel occupancy tax revenue for the promotion and support of local cultural, heritage and environmental tourism; requiring voter approval and public oversight for significant expansions of the Austin Convention Center; and establishing other local requirements for the use of hotel occupancy tax revenue.

Following the test in *Dacus*, this language accurately and concisely reflects the two chief features of the petition: voter approval of a significant convention center expansion, and reprioritizing the bulk of hotel tax revenues away from convention center purposes and towards arts, cultural and other tourism uses. The petition’s title also

emphasizes to signers that the Hotel Occupancy tax revenue would now be focused on cultural and artistic tourism: “Petition To Support Austin’s Music, Arts & Cultural Tourism For The Benefit Of All Of Austin”.

There is no mandatory cost to the City of Austin (and its taxpayers) for a convention center expansion election if Proposition B passes. The City elections for Council are held the first Tuesday in November of every even-numbered year. Charter of the City of Austin, Article III, Section 2. According to the Travis County Clerk, who administers for a charge all elections for the City, there is no additional cost to add a ballot measure to the City Council candidate ballot. (TAB I, Statement of Travis County Clerk and Election Administrator Dana DeBeauvoir). (This Council regularly adds ballot measures in November of even-numbered years to avoid additional costs). While the City could call the election in May and incur election costs, the Council regularly can and does avoid any cost by having ballot measures on even-numbered year November ballots. In short, it is misleading to state that taxpayers must pay for a convention center expansion election, because the Council can and does avoid any such cost by placing it on November of even-numbered year elections.

Relator filed an Emergency Original Petition with the Texas Supreme Court on Monday, August 12, 2019, *In Re Linder*, No 19-0697. The Court denied the filing without prejudice to refile. No reason was given. We believe the Court may have been indicating that we had time to file with the Court of Appeals first, which is what we are

now doing.

ARGUMENT

A. STANDARD FOR MANDAMUS

This Court's constitutional and statutory grant of mandamus jurisdiction is broad. *In Re Reece*, 341 S.W.3d 360, 374 (Tex. 2011) (orig. proceeding); *see* TEX. CONST. art. 5, § 6; TEX. GOV'T CODE § 22.002 (permitting the Court to issue writs of mandamus "agreeable to the principles of law regulating those writs"). Most relevant to this case, the Texas Election Code provides a remedy through mandamus "to compel the performance of any duty imposed by law in connection with the holding of an election." *See* Tex. Elec. Code § 273.061. The Courts have applied this mandamus authority in similar circumstances to compel a city council to fulfill its ministerial duty to correct erroneous ballot language, particularly when the election deadlines are imminent. *In re Williams*, 470 S.W.3d at 821 (Tex. 2015).

Mandamus is an "extraordinary remedy, not issued as a matter of right, but at the discretion of the court." *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 138 (Tex. 2004) (orig. proceeding). "Mandamus review of significant rulings in exceptional cases may be essential to preserve important substantive and procedural rights from impairment or loss" *Id.* at 136. Mandamus is a remedy not restricted by "rigid rules" that are "necessarily inconsistent with the flexibility that is the remedy's principle virtue." *Id.*; *see also In re McAllen*, 275 S.W.3d 458, 464 (Tex. 2008) (orig.

proceeding). Mandamus is a proper vehicle for this Court to correct injustice that otherwise would elude review by the appellate courts. *See In re Prudential*, 148 S.W.3d at 138. Mandamus is generally appropriate only when the relator has no adequate remedy on appeal. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135-40 (Tex. 2004) (citing *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992)). The “adequacy” of an appellate remedy must be determined by balancing the benefits of mandamus review against the detriments. *In re Team Rocket, L.P.*, 256 S.W.3d 257, 262 (Tex. 2008) (orig. proceeding). In evaluating the benefits and detriments, this Court should consider whether mandamus will preserve important substantive and procedural rights from impairment or loss. *Id.* In the present case, with appropriate speed in the Court and corrective action by the Austin City Council, the defective wording of the ballot can be corrected prior to the election to comply with the Texas Supreme Court’s standard in *Dacus*. Under these circumstances, a post-election contest is not available as an adequate remedy. *See In re Williams*, 470 S.W.3d at 823 (Tex. 2015); *Blum v. Lanier*, 997 S.W.2d at 264).

In addition to impairment of rights, this Court should consider whether mandamus will "allow the appellate courts to give needed and helpful direction to the law that would otherwise prove elusive in appeals from final judgments." *Prudential*, 148 S.W.3d at 136. The City Council opposes the petition initiative and has added extraneous, false language not in the petition intended to prejudice the voters: “the

City must pay for the [convention center expansion] election.” This is a new and dangerous precedent for attempting to interfere with citizen initiated petition elections that should be curtailed now before more such extraneous language by is added by other city councils to future initiative’s ballot language.

B.

**THE AUSTIN COUNCIL’S BALLOT LANGUAGE VIOLATES THE
COMMON LAW STANDARD IN *DACUS***

“In general, the form of a ballot proposition to be submitted to the voters of a city is prescribed by municipal authority unless such form is governed by statute, city charter, or ordinance.” *Bischoff v. City of Austin*, 656 S.W.2d 209, 211-12 (Tex. 1983) (citing Tex. Elec. Code Ann. Art. 6.07 (Supp.1982)). Where no such other law prescribes the form of the ballot proposition, the City’s discretion is limited by “the common law requirement that the statement describe the proposition with such definiteness and certainty that the voters will not be misled.” *Id.* at 212. *In Dacus v. Parker, supra*, at 825, the Texas Supreme Court held that an “inadequate description may fail to do that in either of two ways. First, it may affirmatively misrepresent the measure’s character and purpose or its chief features. Second, it may mislead the voters by omitting certain chief features that reflect its character and purpose. The common law standard thus requires that the ballot identify the measure for what it is, and a description that does either of the foregoing fails to comply with the standard.”

Id., at 826.

The ballot language in question affirmatively misrepresents the petition initiative and misleads voters. First, there is no mandatory cost to the City taxpayer's of holding a ballot measure election in November of even-numbered years. The Council's extraneous language ("at an election for which the city *must* pay" (emphasis added)) indicates that a convention center expansion election will necessarily cost the City money, which is false and prejudicial. The petition is proposing an alternative, allegedly more reasonable and prudent use of the city's hotel occupancy tax, yet the ballot language misrepresents that the initiative will incur unnecessary election costs that it does not.

Second, the Council's ballot language leaves out one of the two chief features of the petition initiative: it redirects annually tens of millions of dollars of hotel occupancy tax revenue from the convention center to cultural, arts, and other tourism uses. The council adopted ballot language only references limiting revenue to the convention center: it says nothing about reprioritizing hotel tax spending arts programs and no less than 15% support the City's historic preservation programs). Since the City's hotel occupancy tax raises approximately 100 million a year, hundreds of millions of dollars over a decade would be redirected from convention center tourism to cultural, arts and other allowed tourism uses. (TAB D). The ballot language fails the *Dacus* chief features test, because of the huge amount of dollars

involved in reprioritizing expenditures and the centrality to the initiative of redirecting these funds to culture and arts and other authorized non-convention center uses.

CONCLUSION

Relator asks this Court to grant the mandamus without oral argument “lest the actions of city officials “thwart the will of the public.” *See In re Woodfill*, 470 S.W.3d 473, 481 (Tex. 2015).

PRAYER

For these reasons, Relator ask the Court for the following relief:

- a. Cite the Respondent to appear herein;
- b. Issue an immediate writ of mandamus ordering and compelling the City of Austin and its Mayor and Council to perform the following ministerial acts: (1) excise from the ballot language “at an election for which the city must pay” and preclude similar language or reference; 2) include language as to the chief feature of redirecting the hotel occupancy tax to cultural, arts, historic and other tourism, such as “to require redirecting such remaining Hotel Occupancy tax revenue to cultural, historic, arts and other tourism uses as allowed by law”; and preclude the City and Council from adding extraneous misleading other language, as Council thought of doing on August 9, 2019 as to a sports facility; all of which would constitute definite

and certain ballot language as to not mislead voters on the ballot measure, pursuant to this Court's standard in *Dacus*. and (4) to hold a validly called meeting of the City Council to take the actions within 2 business days of receipt of the Order from the Court, so as to have a November 2019 election as Relators are entitled.

- c. All costs of suit;
- d. All other relief to which Relator may show themselves to be justly entitled.

Respectfully submitted,

/s/ Fred I. Lewis _____

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TRAP 52.3(J) CERTIFICATION

Pursuant to TRAP 52.3(j), the undersigned certifies that he has reviewed the above Emergency Petition for Writ of Mandamus and concluded that every factual statement in the petition is supported by competent evidence included in the appendix.

/s/ Fred I. Lewis _____

Fred I. Lewis

CERTIFICATE OF COMPLIANCE

I certify that this Brief complies with TRAP Rule 9.4 and contains 2732 words in Times New Roman typeface of 14-point.

/s/ Fred I. Lewis _____

Fred I. Lewis

CERTIFICATE OF SERVICE

On August 16, 2019, this document was emailed to Anne Morgan, Austin City Attorney, to her email address Anne.Morgan@austintexas.gov as counsel for Respondent City of Austin, Austin City Council. Ms. Morgan's address is Law Department, P.O. Box 1546, Austin, Texas 78767-1546.

/s/ Fred I. Lewis _____
Fred I. Lewis

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Tab A: Petition

PETITION TO SUPPORT AUSTIN'S MUSIC, ARTS & CULTURAL TOURISM FOR THE BENEFIT OF ALL OF AUSTIN

We, the undersigned registered voters of the City of Austin, petition the adoption of the following citizen-initiated ordinance:

The caption of the petitioned ordinance, which shall be used verbatim as the ballot language, reads as follows:

A PETITIONED ORDINANCE PRIORITIZING THE USE OF AUSTIN'S HOTEL OCCUPANCY TAX REVENUE FOR THE PROMOTION AND SUPPORT OF LOCAL CULTURAL, HERITAGE AND ENVIRONMENTAL TOURISM; REQUIRING VOTER APPROVAL AND PUBLIC OVERSIGHT FOR SIGNIFICANT EXPANSIONS OF THE AUSTIN CONVENTION CENTER; AND ESTABLISHING OTHER LOCAL REQUIREMENTS FOR THE USE OF HOTEL OCCUPANCY TAX REVENUE

PART 1. Findings and Purpose:

(A) The City of Austin benefits significantly from cultural, heritage and environmental tourism, which collectively generate the bulk of the revenue the City receives from the assessment of the Hotel Occupancy Tax; however, with too little support from the City of Austin, many of our local artists, musicians, performers and local business owners upon which Austin's cultural fabric is based are struggling to survive with Austin's growing costs of living and doing business.

(B) In contrast, the Austin Convention Center's corporate meetings, conventions and events account for less than four percent (4%) of Austin's overnight visitors, yet Convention Center-related operations, management, construction and reserves consume over seventy percent (70%) of Austin's annual Hotel Occupancy Tax revenue.

(C) The purpose of this ordinance is to re-prioritize Austin's investment of Hotel Occupancy Tax revenue to promote and support tourism that emphasizes and enhances Austin's diverse culture, heritage, environment and locally owned businesses.

PART 2. Section 11-2-7 of the Austin City Code is hereby repealed and replaced with the following provisions:

§ 11-2-7 ALLOCATION AND USE OF HOTEL OCCUPANCY TAX REVENUE

(A) This section applies to all revenue, including interest and appreciation, derived from the Hotel Occupancy Tax and collected by the City of Austin, as authorized under state law.

(B) The revenue derived from the Hotel Occupancy Tax shall be prioritized for activities and expenditures that will directly promote, support and enhance tourism that is focused on Austin's unique and diverse culture, arts and music, historic preservation, parks, environmental resources, and locally owned businesses (collectively, the "Cultural Tourism Industry"). In furtherance of such objective, for each fiscal year, allocations of Hotel Occupancy Tax revenue shall be subject to the following constraints:

(1) *Support for Cultural Arts* . Not less than fifteen percent (15%) of the total annual Hotel Occupancy Tax revenue collected for each fiscal year shall be prioritized and allocated to the Cultural Arts Fund (or a similar fund established by the City Council), which may be used for purposes described under Section 351.101(a)(4) of the Texas Tax Code.

(2) *Support for Historic Preservation* . Not less than fifteen percent (15%) of the total annual Hotel Occupancy Tax revenue collected for each fiscal year shall be prioritized and allocated to the Historic Preservation Fund (or a similar fund established by the City Council), which may be used for purposes described under Section 351.101(a)(5) of the Texas Tax Code.

(3) *Convention Center Expenditure Cap* . The total annual allocation of Hotel Occupancy Tax revenue used for Convention Center Expenditures shall be limited to the greater of (i) an amount equal to five (5) times the Convention Center's Earned HOT Revenue or (ii) thirty-four percent (34%) of the total annual Hotel Occupancy Tax revenue collected for each fiscal year. For purposes of this ordinance, (a) the "Convention Center's Earned HOT Revenue" shall be deemed to be the total local Hotel Occupancy Tax revenue generated solely from documented hotel room rentals by convention delegates and registrants of events held at the Convention Center during the prior fiscal year; and (b) "Convention Center Expenditures" shall include but are not limited to the following: (1) the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of Convention Center facilities within the Central Business District; (2) the city's provision of facilities, personnel, and materials for the registration of convention delegates or registrants; and (3) the marketing, selling, and servicing of convention services. Funds related to Convention Center Expenditures shall be allocated to the Convention Center Capital Improvement Project Fund (or a similar fund established by the City Council).

(4) *Prioritization of Remaining Funds* . The remainder of the total annual Hotel Occupancy Tax revenue collected for each fiscal year shall be allocated to support and enhance Austin's Cultural Tourism Industry through methods consistent with state law, including but not limited to, (a) advertising and conducting solicitations and promotional programs to attract cultural tourists to diverse, geographically dispersed parts of the City; (b) constructing, operating and maintaining a transportation system that could help connect cultural tourists from hotels in and near the City to downtown and other commercial centers with high concentrations of locally owned businesses and tourist attractions, as authorized under Section 351.110 of the Texas Tax Code; and (c) constructing, maintaining and operating cultural tourist venues, such as multipurpose, performing arts, and live music venues, as authorized under Chapter 334 of the Texas Local Government Code or other applicable law.

(C) Without limitation to the above, a tax authorized under Chapter 334 (*Sports and Community Venues*), Subchapter H (*Hotel Occupancy Taxes*) of the Texas Local Government Code shall be subject to the limitations of subsection (B)(3) above.

(D) Notwithstanding anything in this section, any remaining amounts from past collections of Hotel Occupancy Revenue that have accumulated in the Convention Center Capital Improvement Project Fund and/or its reserves prior to May 1, 2019, may be spent retiring previously issued, voter-approved debt for the convention center as it existed on May 1, 2019. In the event that such funds are used to pay down previously issued convention center debt earlier than otherwise required, the payments of such debt may exceed the limits prescribed under Section 11-2-7(B)(3) above.

PART 3. Title 11 of the Austin City Code is amended to add a new Section 11-2-8 to read as follows:

§ 11-2-8 CONVENTION CENTER IMPROVEMENT AND EXPANSION

(A) For purposes of this ordinance, the term “Convention Center” shall refer to any facility built, operated or managed using Hotel Occupancy Tax revenue that is used primarily to host conventions or other corporate events or meetings, and such term expressly excludes facilities used primarily for purposes related to cultural arts, education, and historic preservation.

(B) Except as provided in this section, any construction, expansion, redesign, reconfiguration or remodel of a Convention Center which costs in excess of twenty million dollars (\$20,000,000), whether via direct expenditure or an obligation incurred through debt financing, shall require voter approval by ballot measure at the next required uniform election date. The aforementioned twenty-million dollar cap shall include all total aggregate costs of improvements made to a Convention Center over any given forty-eight (48) month period of time. Such amount shall be modified each year with the adoption of the budget with an appropriate index to adjust for inflation.

(C) No Convention Center may, without voter approval, be constructed, expanded, redesigned, reconfigured or remodeled in any manner that would remove real property from the tax rolls of the City of Austin or another taxing jurisdiction, such as the Austin Independent School District or other applicable school district.

(D) Not less than ninety (90) days prior to an election required under subsections (B) or (C) above, the City shall publish and distribute to the public an objective analysis of the total estimated 30-year costs of such expansion, redesign, reconfiguration or remodel, which analysis shall include, among other appropriate information, (a) the potential lost property tax revenue over such period to all relevant taxing jurisdictions resulting from the property’s removal from the tax rolls, (b) all historic expenditures of City revenues for the construction, operation, maintenance and debt service for the convention center over the prior twenty (20) year period; and (c) the total projections for construction, operation, maintenance and debt service for the convention center facility to be improved for the full period of any contemplated bonded indebtedness that would be authorized by such election.

PART 4. Title 11 of the Austin City Code is amended to add a new Section 11-2-9 to read as follows:

§ 11-2-9 ADDITIONAL REQUIREMENTS FOR USE OF HOTEL OCCUPANCY TAX REVENUE

(A) The City shall be prohibited from contracting with an entity to manage or supervise programs and activities funded by Hotel Occupancy Tax revenue, as authorized under Section 351.101(c) of the Texas Tax Code, unless such entity agrees to be bound to the provisions of this ordinance. For purposes of this ordinance, such contracted entity shall be referred to as a “Convention and Visitors Bureau”.

(B) Any Convention and Visitors Bureau that uses Hotel Occupancy Tax revenue shall comply with all open government and public information laws that are applicable to a City of Austin department, as if they are operating as a City of Austin department. All public information requests submitted to a Convention and Visitors Bureau shall be processed and administered through the City’s Public

Information Office.

(C) Under no circumstance shall Hotel Occupancy Tax revenue be used to lobby directly or indirectly any governmental entity or official, whether state or local, nor be used to support or oppose a candidate or ballot measure.

(D) Prior to each year's allocation of Hotel Occupancy Tax revenue, any Convention and Visitors Bureau that uses Hotel Occupancy Tax revenue shall be required to prepare a report using the City's Equity Assessment Tool to ensure that budget and planning decisions are being made in ways that are reducing racial and geographic disparities, promoting service level equity, and increasing accessibility.

(E) Any construction project using Hotel Occupancy Tax revenue shall (i) comply with all then-current environmental regulations of the Austin City Code, without variance or waiver; (ii) achieve sustainable-building best practices superior to those required for LEED™ Gold certification, and (iii) incorporate elements of green infrastructure (such as green roofs and vertical gardens), on-site

(building-scale) alternative water use features (such as methods that harvest rainwater, stormwater, blackwater and air conditioning

(AC) condensate), recycled construction materials, facilities for diversion of recyclables and organics in building operations, and amenities that support active transportation (such as showers, tree shading and bike cages).

PART 5. Effectiveness and Severability:

(A) The effective date of this ordinance shall be the earlier of (i) ten (10) days after the date of its final passage by the Austin City Council, as prescribed under Article IV, Section 4(a) of the Austin City Charter or (ii) the date upon which the results of an election required under Article IV, Section 4(b) are canvassed. This ordinance shall apply to all uses of the Hotel Occupancy Tax, regardless of the effective date of any City contract or action.

(B) If any section, paragraph, clause, or provision of this ordinance is for any reason held to be invalid or unenforceable, the invalidity or unenforceability of that section, paragraph, clause, or provision shall not affect any of the remaining provisions of this ordinance, and to this end, the provisions of this ordinance are declared to be severable. This ordinance shall supersede the Austin City Code to the extent there are any conflicts.

Tab B: Transcription of City Council Draft Ballot Document

(Available to Relator at this time only as a JPG photo; reproduced below verbatim with typed language typed and handwritten deletions marked through. This is the only documents available at this time.

Council Action Notes for August 9-10, 2019 Agenda for Item 17.

(Available as official City document at https://austintexas.gov/council_meetings/action_notes.cfm?mid=679)

“Approve an ordinance ordering a special municipal election to be held on November 5, 2019, for the purpose of submitting to the voters a proposed citizen-initiated ordinance, supported by a petition certified sufficient on July 26, 2019, to amend the City Code regarding the use of Austin’s Hotel Occupancy Tax revenue; providing for the conduct of the special election, including authorizing the City Clerk to enter into joint election agreements with other local political subdivisions as may be necessary for the orderly conduct of the elections.

Approved as amended.”

Council Document Transcribed Verbatim for Item 17

(Deletions are Handwritten Deletions in Original Council document in a JPG format)

Item 17

HOT/Convention Center Ballot Language

Shall an ordinance be adopted that limits, beyond existing limits in state statute and city ordinance, the use of Austin’s Hotel Occupancy Tax Revenue, including

(a) a cap on

(b) nothing

the amount of Hotel Occupancy tax revenue the may be used to construct, operate, maintain or promote the Austin Convention Center and potential future Chapter 334 Local Government Code sports and community venues;

(a) requires that any remaining Hotel Occupancy Tax revenue be spent on Austin’s cultural tourism industry OR

~~(b) requires that any remaining Hotel Occupancy tax revenue be spent on Austin tourism; OR~~

(c) nothing;

requires any private third-party entity managing such funds to comply with open meetings and public information laws applicable to the city; and requires voter approval for Convention Center improvements or expansions of more than \$20,000,000 at an election for which the city must pay.

Petitioner’s Language for HOT/Conveticion Center petition:

~~A PETITIONED ORDINANCE PRIORITIZING THE USE OF AUSTIN’S HOTEL OCCUPANCY TAX REVENUE FOR THE PROMOTION AND SUPPORT OF LOCAL CULTURAL, HERITAGE AND ENVIRONMENTAL TOURISM; REQUIRING VOTER APPROVAL AND PUBLIC OVERSIGHT FOR SIGNIFICANT EXPANSIONS OF THE AUSTIN CONVENTION CENTER; AND ESTABLISHING OTHER LOCAL REQUIREMENTS FOR THE USE OF HOTEL OCCUPANCY TAX REVENUE.~~

TAB C: Clerk Certification



CERTIFICATE OF SUFFICIENCY OF INITIATIVE PETITION

I, Jannette Goodall, City Clerk of the City of Austin, Texas, hereby certify that:

An initiative petition proposing an ordinance "prioritizing the use of Austin's Hotel Occupancy Tax Revenue for the promotion and support of local cultural, heritage and environmental tourism; requiring voter approval and public oversight for significant expansions of the Austin Convention Center; and establishing other local requirements for the use of Hotel Occupancy Tax revenue" was filed with the City Clerk on July 12, 2019.

At the time of filing, the petition was comprised of 5,606 pages containing 31,908 signatures. In accordance with the City of Austin Charter and state law, the number of signatures required for a sufficient initiative petition is 5% of the qualified voters of the city or 20,000, whichever number is the smaller.

Based on verification against the voter registration rolls obtained from Travis County, Hays County and Williamson County, I have determined the following facts regarding this petition:

The raw-count number of signatures filed with the petition was 31,908. The required number of signatures is 20,000. The Texas Election Code authorizes the use of random sampling to verify petitions of large size, and the City has used the same random sampling method since 2002. Under that method, and in accordance with law, 25% of the total number of submitted signatures on this petition were verified, which equates to a sample size of 7,978.

Based on the analysis of the random sample results, it has been determined that the petition meets the requirement for the minimum number of signatures of valid voters, based on the required minimum of 20,000. Of the 7,978 submitted sample lines checked under the sampling method, 1,794 of the sample lines were disqualified on account of bearing signatures of persons not on the voter list (1,773), or of being duplicate signatures of registered voters who signed more than once (21). The remaining 6,184 sample lines were validated as bearing signatures of qualified voters.

Based on the above, the petition is determined to be sufficient, please see the attached report on the statistical analysis.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Austin on this the 26th day of July 2019.



J!a.Au

Jannette Goodall, City Clerk City of Austin, Texas

Hotel Occupancy Tax Fund

	20 18- 17	20 17-18	2018-18	2018-18	2018-20
	Actual	Actual	Estimated	Amended	Proposed
Beginning Balance	0	0	0	0	0
Revenue					
Hotel/Motel Occupancy Tax	92,477,077	99,188,325	100,586,884	95,790,687	101,590,007
H/MOT Penalties & Interest	67,211	169,038	238,822	233,795	243,956
Total Revenue	92,544,288	99,357,364	100,825,706	96,024,482	101,833,963
rrotal Available Funds	92,544,288	99,357,364	100,825,706	96,024,482	101,833,963
Transfers Out					
Trf to Conv Ctr Tax Fund	46,559,709	48,122,181	50,412,853	48,012,241	50,916,981
Trf to Conv Ctr Venue Fund	20,691,135	21,385,497	22,405,712	21,338,774	22,629,770
Trf to Cultural Arts Fund	10,867,036	11,231,717	11,762,999	11,202,856	11,880,629
Trf to Historical Preservation Fund	0	7,035,463	11,762,999	11,202,856	11,880,629
Trf to Tourism & Promotion Fnd	15,001,538	8,469,504	4,481,143	4,267,755	4,525,954
Total Transfers Out	93,119,418	96,244,361	100,825,706	96,024,482	101,833,963
rrotal Re uirements	93,119,418	96,244,361	100,825,706	96,024,482	101,833,963
Excess (Deficiency) of Total Available Funds Over Total Requirements	(575,130)	3,113,003	0	0	0
Adjustment to GAAP	575,130	(3,113,003)	0	0	0
Ending Balance	0	0	0	0	0

TAB E: Texas Comptroller Fiscal Notes (August 2018): Paying for Convention Centers p. 4)
<https://comptroller.texas.gov/economy/fiscal-notes/2018/august/convention-centers.php>

**MUNICIPAL HOTEL OCCUPANCY TAX RATES, TOTAL HOT REVENUE AND FUNDING FOR
 CONVENTION AND VISITOR INFORMATION CENTERS
 TEXAS' 10 LARGEST CITIES, FISCAL 2017**

CITY	POPULATION	HOT RATE	TOTAL HOT REVENUE	HOT REVENUE FOR CONVENTION AND VISITOR INFORMATION CENTERS	SHARE OF HOT REVENUE USED FOR CONVENTION AND VISITOR INFORMATION CENTERS
HOUSTON	2,240,582	7%	\$82,882,029	\$27,250,358	33%
SAN ANTONIO	1,439,358	9	85,813,710	41,725,710	49
DALLAS	1,278,433	7	55,842,715	37,637,990	67
AUSTIN	907,779	7	72,428,283	46,731,211	65
FORT WORTH	815,930	9	26,910,539	9,480,451	35
EL PASO	678,058	7	10,406,384	4,454,616	43
ARLINGTON	383,899	7	8,991,541	3,672,739	41
CORPUS CHRISTI	320,050	9	15,315,213	5,375,853	35
PLANO	279,088	7	8,263,231	5,584,486	68
LAREDO	251,671	7	3,842,752	N/A	N/A
TOTAL, 10 LARGEST TEXAS CITIES	8,594,848		\$370,696,397	\$181,913,413	49%

Source: Texas Comptroller of Public Accounts

TAB F: City Council May 23, 2019 Palm School/Convention Center Resolution #20190523-029, p. 18 , references UT Study Scenario 5 (\$1.2 Billion Option)

“The City Manager is directed to recommend an initial design for a Convention Center expansion and to begin with **Convention Center Scenario 5** (as outlined in the UT Center for Sustainable Development Study). Of the scenarios presented, this one best embodies the desired re-envisioning of what a convention center can be, including not only additional convention space but also removing existing elements to create and enhance public space, place-making, and connectivity within the Palm District, especially along Second Street, Waller Creek, and Palm Park.”

<https://www.austintexas.gov/edims/document.cfm?id=320822>

The UT Study cannot be converted into a scannable PDF that is legible, but the reference to the \$1.2 billion Option 5 can be found at University of Texas: Frameworks for Placemaking: Alternative Futures for Austin Convention District, p. 268.

https://issuu.com/utsoa/docs/frameworks_for_placemaking_utsoacsd?e=2095123/68762342

ORDINANCE NO.

2 AN ORDINANCE ORDERING A SPECIAL ELECTION FOR THE
3 PURPOSE OF SUBMITTING TO THE VOTERS A PROPOSED CITIZEN-
4 INITIATED ORDINANCE REGARDING THE USE OF AUSTIN'S HOTEL
5 OCCUPANCY TAX REVENUE.; PROVIDING FOR THE CONDUCT OF
6 THE SPECIAL ELECTION; AUTHORIZING THE CITY CLERK TO
7 ENTER INTO JOINT ELECTION AGREEMENTS WITH OTHER LOCAL
8 POLITICAL SUBDIVISIONS AS MAY BE NECESSARY FOR THE
9 ORDERLY CONDUCT OF THE ELECTION; AND DECLARING AN
10 EMERGENCY.

11 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

12 PART 1. The City received a petition, certified sufficient by the City Clerk on July
13 26, 2019, for a citizen-initiated ordinance that included a findings and purpose
14 section, proposed amendments to the City Code regarding the use of Austin's Hotel
15 Occupancy Tax revenue, and effectiveness and severability clauses.

16 PART 2. A special election shall be held in the City of Austin on November 5,
17 2019, to submit to the voters of the City the proposed citizen-initiated ordinance
18 regarding the use of Austin's Hotel Occupancy Tax revenue. The ballot shall be
19 prepared to permit voting "Yes" or "No" on the proposition:

20 Proposition B: Ballot Language to be Determined

21 PART 3: If the proposition provided in Part I is approved by a majority of voters
22 voting at the election, the City Code is amended as indicated below with the findings
23 and purpose appearing before Section 11-2-7 of the City Code, and the effectiveness
24 and severability appearing after Section 11-2-9 of the City Code:

25 PART 1. Findings and Purpose:

26 (A) The City of Austin benefits significantly from cultural, heritage and
27 environmental tourism, which collectively generate the bulk of the revenue
28 the City receives from the assessment of the Hotel Occupancy Tax;
29 however, with too little support from the City of Austin, many of our local
30 artists, musicians, performers and local business owners upon which
31 Austin's cultural fabric is based are struggling to survive with Austin's
32 growing costs of living and doing business.

33 (B) In contrast, the Austin Convention Center's corporate meetings,
34 conventions and events account for less than four percent (4%) of Austin's

TAB H: Closed Circuit Transcription of Discussion on Item 17

(Transcript at City webpage <https://www.austintexas.gov/edims/document.cfm?id=324964>)

Video link of Council hearing on August 9, 2019 on item 17, starting at 2:03 am, is at <http://austintx.swagit.com/play/08082019-683/0/>)

>> Mayor Adler: Okay. If staff would take a look at that while we continue on 15 and 17. 15 and 17 have to happen today. But the other items that we have yet to do are items 33, which is the historic issue -- we did 33. 75, which is Seaholm, did we do 77? We did that. [2:01:11 AM] 148, we just did. >>

Kitchen: 90 -- >> Mayor Adler: 90 we did. >> Tovo: I can read you the speaker list. 15 and 17, which are the ballot language, 75. >> Mayor Adler: Right. >> Tovo: Which is Seaholm. 112, 113, 123 and 124. >> Mayor Adler: The zoning cases. >> Tovo: My concern is that we've asked people to wait till 2:00 in the morning and we're going to send them home with a postponement. >> Mayor Adler: We don't have very many speakers. >> Tovo: If there's any way to fly through them, I would suggest we fly through some of those and then hit the other language -- >> Kitchen: I think we should do this first, that's going to take us a while, at the end of the day, I don't think it's appropriate for us to try to make decisions at this time of the night, so these other things can be postponed if necessary. >> Mayor Adler: Let's going to with the language. I think we've narrowed down the issues, that's going to take us a [2:02:12 AM] long time to do. Let's pull up item 15, which is the sports issue. I think that -- city attorney, do could you hand language out to us? >> It's on a white piece of paper, it says proposed language for the sports facility. What we're going to do is just put something up on the screen that shows the proposed ballot language and then the red line version and the clean version. >> Mayor Adler: Okay. >> We'll do that right now. >> Mayor Adler: Why don't you do that. While you do that, I'll call the speakers up. Is Gus peña here? Is Craig mazer here? Do you want to speak on this? >> It's hard to know what to say till I see what your changes are. >> Mayor Adler: Okay. Fair enough. Let us post the bank up on the - - post the language up on [2:03:16 AM] the board so you can see. >> Can we get the ballot language on 17, please? Okay. Do we have an extra copy of the ballot language on 17? >> Mayor? >> Mayor Adler: Yes, mayor pro tem? >> Garza: I just want to emphasize what [indiscernible] Suggested, if this session was any indication of what this discussion is going to be, people waiting for this are going to be here for at least another hour or two. I would strongly suggest if we're going to postpone things, to let them know now because I'm not ready to vote on these next two, I understand we have to do those, but my guess is we're going to be [2:04:16 AM] here till 5 o'clock on the morning if we keep everything on the agenda as is. >> Casar: On zoning, I pulled 123 and 112. 112 I think we should vote whether we want to make it [indiscernible], we've been postponing that for a long time. I'd like to do it tonight. 123, you know, we have Mr. [Indiscernible] And his clients here, so I would leave it up to them, but I don't mind, if they've come to -- >> Items 112 and 113, the applicant was requesting postponement. >> Casar: But I don't want to postpone. >> I understand. But I think he wanted to postpone. >> Mayor Adler: Okay. Let's start on this. I don't know if it's going to take us that long on the ballot language. I think the issues have been done and I think we're primed to take [2:05:18 AM] a vote. So I would suggest we start. Does someone want to move passage of 15 with the language that's been handed out by council? Councilmember Casar makes that motion. Is there a second to that to that motion? Councilmember Flannigan seconds that motion. The language that is on the board. Mr. Mazer, would you like to speak? >> [Off mic] >> Mayor Adler: Okay. [2:06:31 AM] >> I will say, I haven't had time to read -- to thoroughly think about this, but I just know as someone who still thinks that the cypress stadium -- not the stadium, not the cypress stadium, but 85% impervious cover on the headwaters of a creek, still thinks that's a bad idea, I think to make this language sounds like someone is

trying to make it sound onerous or something that would be terrible rather than just stating the fact that what's on the original ballot language. You know, there's something I would call good faith, and right now this country is torn apart by a president that doesn't have good faith in anything he does. And it makes me sick to turn on the news anymore. This is a city now we're better than that. And I would like to see us live up to being better than that. That when people -- when the [2:07:32 AM] people in the city sign petitions to go through processes, it doesn't -- a bad thing. From what I can read from here, it's this back and forth, let's be nasty to each other, let's try to get one hand behind the back. The people sent a message, I think, to the city council about what we thought about the process about which this development was planned. This has nothing to do -- about the process by which this development was planned. That's what we'd like to vote on. And I think this ballot language -- it's none of this push-pull, like I'll get you, you get me, we'll -- can't we do this as a community? Can't we do this as a community to decide whether this is the right place for this kind of development? I see maps from the 1800s that [2:08:33 AM] show that a creek starts under that bridge on that railroad track. We say there's no -- that site has been covered with water all spring until the rain stopped. I think there's serious issues. They still have a site plan, they're still arguing it now. You can go online and see what they're talking about. Now, that's what I thought the purpose of this was, so I think this is a little -- like changes that are being asked for are a little sneaky, at least. So anyway, that's my opinion. >> Mayor Adler: Thank you. Brings us up to the dais. Councilmember Casar. >> Casar: And I appreciate the comments and I think the goal here is to try and make this ordinance speak exactly -- or make ballot language really describe the main features of the ordinance, which is not about soccer, not about the site, about any sports or any entertainment facility, or any sports facility, including youth, recreational, or [2:09:34 AM] professional sports facilities, and the new requirements that would be set on those, and I've gotten, you know, [indiscernible] From folks ranging from the ymca all the way to the long center, folks in facilities that are concerned about whether this would have an impact on them, potentially, or not. >> Mayor Adler: Okay. Further discussion about this language? Yes. >> Actually, I'm sorry, not about the language, I just need the opportunity to interject a little bit earlier, I heard what you said, councilmember Casar, but I'd like very much not to postpone item 123, in addition to the fact there are people here to talk about it specifically. I don't think it's -- >> Casar: I didn't say I'm going to, I said they've been waiting all day and we needed to get to them. >> Mayor Adler: I just wanted to be clear about that. >> Mayor Adler: I think this points out the elements, says city ordinance, we adopted that [2:10:35 AM] requires a sale or lease be approved by a super majority, describes that, requires a site development permit, also have approval, election, requires payment, bonds, tax equal to that amount, requires information to be disclosed to the department. I think that's what that does. It's been moved and seconded. Any discussion? Yes. >> I'm in a bit of con you know conundrum, I want to show support with my actions here. The only way I can -- and maybe you can help me, the only way I can think to make that happen is to have us move the petitioners' [2:11:37 AM] proposed ballot language, which I would show the for, but the dais -- which I would vote for, let the dais make its decision, an -- >> Mayor Adler: A substitute motion would require us to take something that will take too long. You just make the amendment to adopt in its place the petition's proposed language. >> Kitchen: Okay. >> Pool: Who was it that made this? Mr. Casar? I am moving to amount your motion to instead have a vote on the dais on the petitioner's proposed ballot language as -- >> Mayor Adler: The second amendment to have the petition -- councilmember kitchen seconds. Any discussion? Mr. Flannigan? >> Flannigan: I think it's important to remember that the department's [indiscernible] Part [2:12:38 AM] of the council the reflect the underlying ordinance. There's no provision that says the language written by -- the caption written by the petitioners is a governing document of any kind, so I think it's -- the language that we've drafted is clear as to the underlying ordinance's actual impact. >> Mayor Adler: Okay. Let's take a vote on the amendment. Those

in favor of the amendment, please raise your hands. Those opposed, please raise your hand. It's the rest of the dais besides councilmember pool, councilmember kitchen abstaining. Go to the main language proposed, any further discussion? Let's take a vote. Those in favor, please raise your hand. Opposed? Unanimous on the dais. That's the language for that ballot propping. -- ballot proposition. That gets us to item 17. [2:13:45 AM] Is there a motion to -- the way that this is drafted here, you'll see that there is language, there is a question is to whether or not we want to remove the word "Cap" or just leave those two words out, then the next one there's a question about whether we want to include something that relates to the remaining [indiscernible] Or not, and it would be my intent to take that vote and if there was a decision to include from anybody, we would have a vote on the two different language sources. If there was a vote not to include that, we would just remove that section. Councilmember Flannigan. >> Flannigan: I make a motion -- >> We get to speak on this, don't we? >> Mayor Adler: We will. We will. But I just want to get a motion out. >> Flannigan: It's important to do this so the public knows what we're talking about. >> Mayor Adler: Okay. >> Flannigan: So I'll move the [2:14:45 AM] language as a reference in the first of the two debatable sections, B nothing and C nothing, and then we'll take our amendment from there. >> Mayor Adler: Okay. Is there a second to that motion? Councilmember Ellis seconds. Let's hear from our speakers. >> Flannigan: Should we lay out -- >> Pool: Should we lay out our amendments? Since we took one -- >> Mayor Adler: Yes. >> Pool: Okay. -- >> Kitchen: I don't know how you want to do this but I do want to move the petitioner's language and then I also want to move -- because I know it's not going to pass, but I also want to move a, a cap on, and a, any remaining hot tax revenue be spent on [2:15:46 AM] Austin's cultural tourism industry. And that would be an amendment to the amendment. >> Mayor Adler: Correct. We'll figure out a way to deal with that. I'm going to go to speakers now. First speaker is Fred Lewis. Is he here? Bill bunch, you want to come down and speak? Is [indiscernible] Here? You'll be up next. That's fine, you'll have five minutes. >> Tovo: Mayor, I was just going to point out, I think I got copies to people who wanted them but there's a little stack of copies in the second row of what we just voted on and the one we're considering now, in the row where [indiscernible] >> Mayor Adler: Mr. Bunch. >> Good morning. Bill bunch with the tourism terrorism, convention Austin [2:16:47 AM] pack. I respectfully request that you simply use the petition language, and there's a very notable reason for doing that here where maybe otherwise you didn't do it. The petition itself begins, the very first line reads: The caption of the petitioned ordinance, which shall be used verbatim, language reads as follows, and you have the language. The language is fair, it's accurate, and it starts with a petitioned ordinance. Your version sounds like it's a city council-sponsored ordinance. That's misleading to voters. Furthermore, article 4, section 5 of the city charter says, I command you, ballot used in voting upon an initiated or [2:17:48 AM] referred ordinance shall state the caption of the ordinance. This ordinance was assigned a caption. And it was the very first thing that every single signature signer, to the extent they read it at all, that's what they read. You're now putting something on the ballot that doesn't even tell them it's a petitioned ordinance and has some gobbledygook, and unless you go with an amendment that at least mentions cultural tourism, completely mischaracterizes what's being proposed. The ordinance calls for a vote on the convention center, you have that buried way down at the bottom, and prioritizes the spending, two-thirds, for cultural, heritage, and environmental tourism. And it says that about five times in there. So to ignore that is not being [2:18:50 AM] honest with the voters and is misleading them on the ballot, in the ballot box. So I would go back to the earlier issue of good faith that Mr. Mazer raised. Let's have a fair discussion and a fair debate in the community on this, and let's start with having the ballot language reflect accurately what is being proposed and what your charter calls for you to do. In this particular instance, where the caption was integrated into literally the very first sentence of the petition. Thank you. >> Mayor Adler: Thank you. Is John [indiscernible] Here? Rebecca [indiscernible]? Susan [indiscernible]?

Bill Oliver? [2:19:52 AM] >> Yep. Yep. I'm here. >> Mayor Adler: All right. >> I'm coming. >> Mayor Adler: Is Virginia here? >> No. >> Mayor Adler: No. All right. Mr. Oliver. .You have three minutes. >> I've emptied bigger rooms than this. Hi. I'm bill Oliver and I'm here to support the petition languages in the petition, and this is -- this is a pretty -- I can't play -- I don't understand a whole lot. For the hot taxes, and especially the disproportion that goes, going to the convention -- it doesn't sound very Austin, does sound conventional, slight of [2:20:54 AM] hand, though. Emergencies. And there's a little address in that. This is for myself and from Steve brooks, our venturing journalist and troubedor in Colorado right now. [♪ Singing ♪] Tourists come here to Austin, developers sing, to go to conventions and sit in meetings all day, but they could go to Dallas, or Vegas as well. No, it's not the conventions that fill up hotels. It's unconventional [indiscernible], unconventional Austin. They're looking to slip into an [2:21:55 AM] unstate of mind. Unconventional Austin. Unconventional Austin. They come to Austin leave conventions behind. They go strolling on sixth street. [Indiscernible] It's always 420 or Willie Nelson boulevard. Barton springs in the summer. Hook 'em horns in the fall. So many bands at south by southwest they can't hear them all. In the air there was music. When they step off the plane, [indiscernible] Capitol is the [2:22:57 AM] city's refrain. They come looking for night life because there's so much to choose. From two steps to tangos, to tacos to tattoos. Unconventional Austin. Unconventional Austin. [Buzzer sounding] They come to Austin to leave convention behind. They don't come to be conventional, or drink generic beer, they're here to feel unconventional and help the make Austin weird. Unconventional Austin. >> Mayor Adler: I was enjoying [2:23:58 AM] the song. >> Keep it unconventional, will you? >> Mayor Adler: All right. That gets us back up to the dais. Language has been moved and seconded. Councilmember kitchen moves that this -- that the petitioner's language be used instead. Is there a second to that? Councilmember pool seconds that. Further discussion? Mr. Flannigan. >> Flannigan: The last one, state law makes it very clear that any captions on the petition are not the governing document, that we need to be reflecting the underlying agreements, I don't believe the petitioner's language does that. >> Mayor Adler: Okay. Let's take a vote. Those in favor of using the petitioner's language, please raise your hand. That would be tovo, pool. Those opposed, please raise your hand. Kitchen. Those opposed please raise your hand? The balance of the dais. That does not pass. [2:25:00 AM] Councilmember kitchen moves to put the words "A cap on" at the -- in that first paragraph, first line. >> Kitchen: Do you want me to speak to the whole thing or are you going to take them one by one? >> Mayor Adler: I was going to take them one by one. >> Kitchen: Okay. >> Mayor Adler: Is there a second to add the words "A cap on"? Councilmember pool seconds that. Councilmember kitchen, you want to address it? >> Kitchen: Well, I just -- my goal here is to accurately reflect what's in -- what's in the petition ordinance, and I think that that's what I'm suggesting. >> Mayor Adler: Okay. Councilmember Flannigan? >> Flannigan: And the language already describes this as a limit so I think the cap language [indiscernible] >> Mayor Adler: Let's take a vote. Those in favor of adding the words, a cap on raise your hand. Tovo, kitchen, pool, alter. [2:26:01 AM] Those opposed, please raise your hand. The balance of the dais. Councilmember kitchen moves to amend to add the phrase, requires that any remaining hotel occupancy tax be spent on Austin's cultural tourism industry. >> Kitchen: Yes. I'd like to speak to that. >> Mayor Adler: Is there a second to that? Councilmember pool seconds that. Councilmember kitchen. >> Kitchen: Well, I think that one of the tenets of the law, in terms of what criteria is for setting the ballot language, is that we cannot omit certain -- we cannot omit chief features that reflect the measure's character and purpose. I think that -- I feel really very strongly about this, that a is necessary to reflect the [2:27:02 AM] measure's character and purpose and to leave it out or to refer to it in a way other than cultural tourism would be omitting a key feature, and I cannot support that. >> Mayor Adler: Okay. Any further discussion on this? Councilmember Flannigan. >> Flannigan: So this one I think is an interesting -- it's kind of the last piece of this, but the ordinance

attempts to define cultural terms of industry but in the provision that requires the spending of remaining hotel occupancy tax, it specifically states to comply with state law, and this additional uses beyond the cultural tourism definition that are also defined in state law, and ultimately the state law already requires that hotel [2:28:02 AM] occupancy tax revenue beyond the categories identified has to be spent in that way promoting tourism. So I feel pretty strongly that it doesn't make sense to include in ballot language something that is already a requirement. I understand there may be disagreement, but that is my perspective. >> Mayor Adler: Councilmember tovo. >> Tovo: Yeah, I am going to agree with councilmember kitchen on this. I think that the emphasis on cultural tourism was a key element in the ballot language and -- I mean in the petition language and I think it belongs in the ballot language. >> Mayor Adler: Okay. Councilmember kitchen? >> Kitchen: Just quickly, because I know it's late, I respect the differences of opinion, but I think that what's appropriate here is the actual criteria for setting ballot language is based on what is in the petition language, not what is in current law, and so that's why I think [2:29:04 AM] it's important to reflect this. >> Mayor Adler: Okay. I'm going to vote against the >> Mayor Adler: I'm going to vote against this amendment. I think what the petition is about it S trying to suggest that we should limit the use of a hot tax for the construction, operation and maintenance or promotion of the Austin convention center. And that's the only [indiscernible]. And I think that the balance of that language says that the balance of the money should be spent in certain ways, but that's how the balance of the must not is supposed to be spent. I wouldn't want to mislead anybody that the balance should be spent on anything else or create the impression that it's created a new spending areas because it hasn't. What should go to the voters tonight is should we be capping the amount of hot tax money that should be spent on the convention center? I don't think that's proper under the law, but at some point in the future. [2:30:04 AM] So I'm going to oppose the amendment. Any further discussion? >> Kitchen: I respect a difference of opinion on that. I don't think that that's the only major component in this petition. It's clearly talks about prioritizing hot tax revenue for cultural tourism. So anyway, we'll - - we differ on that. >> Could I tell a point of order just to help clear up something here? >> Mayor Adler: We don't have such a thing. >> The reference to 334 is false. >> Mayor Adler: Those in favor -- please, excuse me. Those in favor of the amendment from councilmember kitchen please raise your hand? It is councilmember kitchen and pool and tovo and alter. Those opposed please raise your hand. It's the balance of the dais. That gets us back to the main issue with respect to [2:31:05 AM] councilmember Flannigan. Any further discussion? Yes. >> Alter: Mayor, from our earlier discussion I would like to hear what Mr. Bunch said about 334 being false. >> Mayor Adler: Okay. >> We got to see this -- >> If I may actually -- and I know I'm new to this process, but we had people in the room earlier who had opinions that they wanted to share with us, but we discouraged them from doing so by way of saying that they had to follow the procedure. They had to follow the decorum that is associated with how we conduct these meetings. I don't think it would be fair to allow somebody to speak out of turn right now and I would like for us to be very mindful about not changing the rules depending on who is talking. I think it's very important to make sure it applies for everybody, having good behavior in council chambers. >> Mayor Adler: So in this [2:32:07 AM] case, you're absolutely right, most of the time if someone just raised their hand wishing to speak as Mr. Bunch did just a moment ago that's not in order and we don't let people raise their hand or ask to be able to come back outside of that. But the councilmembers have the ability to call staff back up or resource witness back up. So what makes this one different then is councilmember alter's request that someone come to the podium to answer a question. >> Harper-madison: And I think one of the criticisms we drew earlier was that a lot of times people don't know specifically what the rules are. So I think it's important to be able to say in this instance this was appropriate because, and have folks who don't necessarily engage with us in this way regularly understand what the difference is. So thank you, I appreciate you making that acknowledgment. >> Mayor Adler: I'm

happy for this opportunity to state that explicitly. [2:33:07 AM] Mr. Bunch, do you want to come up? >> Yes. >> Alter: And just to be clear, I was asking specifically about the 334. >> Right. I do think this is a significant legal problem where it's just simply not accurate. The limitation that's in the ordinance is only as to convention center spending. It does not limit spending under 334 for sports or community needs. It simply does not do that. So that phrase really should be stricken. You are fully -- you have a full range of opportunity to fund sports and community venues. >> Alter: Thank you for that clarification. I just want to make sure [2:34:08 AM] that we're on the same page. So part 2, C, Mr. Bunch, without limitation to the above, a tax authorized under chapter 334, sports and community venues, subchapter 4, [indiscernible] Shall be subject to the limitations of section b-3 above only applies to situations where you would be using the 334 for a convention -- >> Convention center. >> Alter: It would be capped according to B. >> Correct. And would that piece that you raised there be addressed by simply completing potential chapter 334 local government code sports and community venues. So it would read the amount of hotel occupancy tax revenue that may be used to maintain or promote the Austin convention center. >> Correct, yes. It would then be accurate. >> Alter: Thank you. I would like to make that motion. To delete a potential [2:35:09 AM] chapter 334 of sports and community venues. >> Mayor Adler: Councilmember alter moves to take out the language and the potential future 334 local government code sports and community venues. Is there a second it that? Councilmember kitchen seconds that. Councilmember Flannigan. Command I appreciate Mr. Bunch's interpretation. Unfortunately I don't think that is what is written in the ordinance. I don't think that's accurate to say that that's the only way that that's going to be interpreted by the court. So it does limit potential future 334 sports and community venues because it specifically calls out that chapter and applies a spending cap to it. I think that the reading of that as we have consulted with legal is more expansive than what your intention was, but I think that's what in the ordinance. >> Mayor Adler: The amendment has been moved and [2:36:10 AM] seconded. Further discussion? Those in favor of the amendment? Sorry, go ahead. >> Alter: So at this point I'm going to disagree with you, Mr. Flannigan. As I read it, the b-3 says convention center expenditure cap. And so it is subject to the limitations of section 3-3. And B 3 is a convention center expenditure cap how can you have a convention center expenditure cap on a sports venue. >> Flannigan: Because the language I think is expansively interpreted to say that the cap is the operative part of that section that applies. That the convention center cap -- >> Alter: B-3. >> Flannigan: I'm still talking, councilmember. It's late at night so let's be real careful. That the section under b-3 [2:37:11 AM] is specific to 351, which is limited to convention center, that this would apply to 334 in the same way. And that -- and I understand there's going to be a difference of interpretation, but I believe the interpretation that I've heard from legal is that this has the potential, as it says, potential future, to limit those projects as well. >> Alter: So I want to clarify where you see that that applies to 351. There are other sections of B that it says 351. It does not say 351 only for B 3. It seems to me that the part C is just a clarification that there is no doubt, but it doesn't say anything about 351 for 3 where it does for one and two, for [2:38:12 AM] instance. And for 44. >> Flannigan: I would say if it were true that the B 3 section was that expansive then C would not have been required because it would have completely limited the spending on convention center, period, but the ordinance specifically calls out 334 as an additional limitation. >> Alter: But you know that in 334 it still says everything in B 3 is about convention centers. I don't know how I build a sports stadium that is a convention center, which is the only way anything in B 3 applies because you have the construction improvement and [indiscernible] And maintenance and repair of facilities. [Indiscernible]. To me it is all about conventi centers and so [2:39:15 AM] were b-3 to apply you would need to have an convention center that is a venue. >> Flannigan: I understand your interpretation of sports and community venues and we have a difference of opinion of how the section is interpreted. >> Kitchen: Mayor, may I say something? Okay. I would like to talk to -- ask legal a

question. When you look at subsection C, it says without limitation to the above and it goes on to reference 334, shall be subject to the limitations of subsection B 3 above. So you have to go to B 3 above to see what those limitations are. About 3 above the caption as councilmember alter has pointed out, says convention center expenditure cap. But you don't have to rely just on the caption. You can read the first [2:40:17 AM] clause. Which says the total annual allocation of hotel occupancy tax revenue used for convention center expenditures shall be limited. So in my opinion it would not be appropriate to interpret C to be beyond the language of subsection B 3 because it says shall be subject to the limitations of B 3 and B 3 with the language I just read clearly only complies to convention center spotty showers? So I would have to agree that to say, and potential future chapter 3 it 34 local government code sports and community venues, without some additional clause that says for convention center spotty showers or something [2:41:17 AM] to that effect would not be accurate and would be -- would not be an accurate statement and could be interpreted to misrepresent key features, which again one of the other criteria for setting the ballot language is we can cannot aformatively miss rep chief features. >> Mayor Adler: I can understand -- I hear Mr. Bunch say that his intent when he drafted this was not to concern anything other than convention centers. I wish the language had said that and made it clear. Instead it said that limitations of section B 3 has [indiscernible] For convention centers. But chapter 334 is something that concerns sports and community venues. And I believe that if this were to pass that someone [2:42:20 AM] would go to court and validly make the argument that the intent of this was to not have money spent on venues, but to have it spent on the softer things that are related to [indiscernible] That is what the balance of the money gets used for. So I understand that that section B 3 contains -- referring back to that limitation. The question what's the operative part of that, and I think that the operative part that is being brought in is a 34% limitation so what is the subject of either of the ordinance. Hang on a second. We'll give some other people a chance to talk, but we can certainly come back to you. >> Kitchen: My question hadn't been answered. I asked city legal to respond to my question. >> You made a statement [2:43:20 AM] about how you interpreted this particular section and I think it is -- it is difficult to draft this sometimes, but I think it says that it's subject to the limitations of section B 3 above and you go to B 3 and that's where it talks about that limitation. >> Kitchen: The convention center limitation. >> Mayor Adler: Councilmember tovo. >> Tovo: Mayor, because you talked about if somebody goes to court and -- I've now forgotten exactly what you said, but you mentioned the word intention and I just wanted to bring Mr. Bunch back up again if he doesn't mind coming back up again and just affirming what your intention was and just to be really clear on the record about what your relationship is to this petition. So that if this passes and there's any question in the courts about what the [2:44:20 AM] intention was, that we have -- we have you on the record stating what the intention was. >> I am definitely one of the co-drafters, and that section does reflect back to B 3, and if you read all of B 3 the only thing it ever talks about at all whatsoever over and over again is convention centers. It says nothing about sports venues or other community venues. >> Tovo: And the intention was that -- >> The intent was absolutely not -- the whole point of this was let's not be tying up 75% of our money on one facility downtown and let's have the opportunity to spend it on doing other things, important things, other parts of town, other arts venues, a range of different types of -- [2:45:21 AM] cultural -- >> Tovo: So it was just to apply to convention centers. >> Yes. >> Mayor Adler: I changed my mind. Because I really do think - - I mean, I think that's a risk and we're going to have to fight that later on I think potentially. But I don't want to remove the focus off of what this is. So I'm going to vote in favor of the amendment to strike that language. Any further discussion? The amendment is to strike that language. Those in favor of that amendment please raise your hand. It is alter, Casar, me, pool, kitchen, tovo. Those opposed? It's the balance of the dais. You were abstaining? Harper-madison abstains. [2:46:22 AM] That language comes out. Further discussion? Let's vote on the language. Those in

-- >> Alter: One more thing. Mr. Bunch, I wonder if there are any other elements of the nature of the thing that we just fixed where you think it is completely unfounded based on this? Just so that we're aware of that. Not that we're -- we're just wrong like that. Not -- I understand that you may not like the language, but just-- I want to make sure that there are not things that are factually not meeting the standard that Ms. Kitchen eloquently laid out earlier. >> Um, yeah. That's the only one that I think was false basically, yes. >> Alter: Thank you. >> Mayor Adler: Let's vote on the language. Those in favor of the [2:47:22 AM] language please raise your hand. The language as amended, which does not have cap, does not have -- omits the words and potential future chapter 334 local government code sports and community venues. And [indiscernible] The last option. Those if favor please raise your hand. We're voting on the language now. The whole thing. The ballot language now that does -- that has on the top it chooses option B, which is nothing. It omits the worth, and potential future chapter 334 local government code, sports and community venues. And then it chooses C as the rest of the language. Those in favor please raise your hand. >> Alter: I'm sorry, I don't remember voting on the section of the 334. I do not believe -- >> Mayor Adler: We did. Councilmember kitchen brought the amendment. [2:48:23 AM] >> Kitchen: It failed. >> Mayor Adler: And it failed. >> Kitchen: We didn't vote on B. I don't know if anyone wants to bring B. I brought a. >> Mayor Adler: A did not pass. >> Kitchen: It failed. >> Mayor Adler: Okay. We ready to vote? Pe R. Those in favor of the matter as amended please raise your hand? The language as amended, please raise your hand? Those opposed to that? Kitchen and pool vote no. The others voting aye. Councilmember harper-madison abstains. What? And 8-2-1 it passes. >> Mayor Adler: We need eight votes or it doesn't pass. >> Harper-madison: Mr. Mayor, if I may, I feel [2:49:23 AM] entirely uncomfortable being put into a position where I don't entirely understand all the implications here and then having the subject matter expert be a citizen as opposed to legal. And so my abstention had more to do with I really wish I could have gotten more of a thorough digest about the true implications of some of this from -- >> Mayor Adler: [Indiscernible]. >> Harper-madison: Of that specific series of questions and answers. >> Mayor Adler: Let's talk about that for second and then get a vote and tell you why I did what I did. I believe that the language that we struck is in fact accurate because I think that by pulling in chapter -- the language that was contained in C where it said without limitation to the above as authorized here by chapter 334 will be subject to section B 3. Section B 3 is the language above. I think that that would under chapter 334 include [2:50:29 AM] sports and community venues. >> Harper-madison: Okay. >> Mayor Adler: But that said, that said, I would rather us use our energy as a city not focused on that issue. And I think that that would be a debatable issue for a court. All the other changes we've made I think aren't even debatable. I think we would win that issue, but I think that it is debatable. And it was for that reason I didn't want to include it. I would just as soon us have language that is bulletproof going forward. Because I think that really focuses the community's attention on the issue rather than litigating something that is debatable. That said, then you make an assessment or a weight of [2:51:30 AM] risks of what risks you think you should take or not take. In this case I think it's better for the community for us to focus on the limitation for convention center spending, and not have us in court where both sides are making an argument on a question. While I think we would be right, is debatable. So it's a question of priorities and weighing relative community needs. >> Harper-madison: Well for me for what it's worth, it's also a question of legitimately, you know, is the language inaccurate? >> Mayor Adler: I don't think it's inaccurate to leave it out because everything that is remaining in here is absolutely true. >> Harper-madison: And I guess I'm sort of pointing that question at Ann. >> Mayor Adler: So there are lots of other things that we could have also included in this as well because the ordinance that [2:52:31 AM] was attached to the petition is actually much longer than our language. >> Harper-madison: Right. >> Mayor Adler: So we are summarizing it, which means by definition we're not including every element that

was in the ordinance. So not including this one element of it is okay with me because I think that we still continue to include the chief elements of what it is that's in this ordinance. >> Harper-madison: That does make me feel better, but I say it probably -- and I'll express opposition sooner next time. My comfort level, especially if we're talking about relative accuracy in a language, I need to be better about turning to our attorney, the person who represents the city at issues where we could be liable in the future and ask what her professional guidance would be for us in this scenario. [2:53:32 AM] In which case I'm comfortable with us taking this vote again if you would like. >> Mayor Adler: All right, thank you. Let's take a vote on this matter. Those in favor of the language as it's been amended please raise your hand. Those opposed. In opposition are pool and kitchen and alter is also opposed. Sorry. >> Alter: [Inaudible]. Sorry. Are we voting on the whole thing over. >> Mayor Adler: We're voting on the whole thing. >> Alter: Sorry. >> Mayor Adler: I have two against and I have one abstention. Three against. So we don't have eight votes. >> Kitchen: Mayor? >> Mayor Adler: Yes. >> Kitchen: If we can go back and revisit the vote on [2:54:33 AM] my a, we might be able to get to a point where we could get approval on this thing where we could all vote for it. Perhaps we can work with that language in some way. >> Mayor Adler: All right. The vote was seven in favor. How many against? Three against? You voted against? Three against and one abstention. Excuse me. It passes on all three readings with a vote of seven. It does not go into effect [indiscernible]. What is the legal result of that? [2:55:36 AM] >> It would go into effect on August the 19th. >> Kitchen: You mean the petition? >> The ballot, passing the election so that -- we do it as an emergency so that the clerk can start working on the election. Redo it as an emergency so the clerk can start working on the election and get things going. The 19th is the very last day to call the election, so you should do this as early as possible to get things going. >> Mayor Adler: I understand that, but if the 19th has been determined as a date that enables the clerk to get the election done and we passed it today on all three readings with seven votes, the clerk could start on the 19th when it goes into effect. Then I think we're de. >> Kitchen: I have a question. I just need to understand what we're doing because earlier I heard it said that we needed eight. And so what -- so now we're changing that? [2:56:36 AM] >> With the elections we typically post them as an emergency ordinance so that the clerk can start working on getting the election documents in order as soon as it goes into effect. This N this case it won't go into effect until August the 19th. >> Kitchen: So I need to parse that so I understand it. Why does it go into effect -- what sets the August 19th date? >> That's 10 days from today. >> Kitchen: Okay. And then what is the deadline for us to vote for ballot language? >> You have to call the language by August -- we have to call the election by August the 19th. >> Kitchen: Is that -- that's the state law? >> Yes. >> Tovo: I'm sorry, I'm really not understanding the [2:57:36 AM] various direction we got. What's the impact of having changed my vote just now based on the information that we have received, I may need to change it yet again. Could somebody please provide we with the -- help me understand whether we need to come back and call an election if it passes on seven. >> No. Normally an ordinance passes when you have six votes. It passes on all three readings if you have seven votes. If you have eight votes for an emergency, then it goes into effect immediately as opposed to the 10-day waiting period that normally it takes for an ordinance to go into effect. So rather than this ordinance going into effect immediately for the clerk to be able to start working, it will go into effect on the 19th. So it just delays some work that the clerk can do, but I believe the clerk can probably get the work done. If I'm incorrect, shake your head. >> Tovo: Mayor, please register my vote as a -- mayor pro tem, did you have -- >> Mayor Adler: You want to change your vote to being [2:58:39 AM] aye? >> Tovo: Yes. >> Mayor Adler: So the vote then is 8-2-1. Eight in favor, two against, kitchen and pool, and alter abstaining. All right. We have three zoning matters left. We have people that have been sitting here for a long time so we should try to handle that. Let's handle 112 and 113.

TAB I: Affidavit of Dan DeBeauvoir, Travis County Clerk

THE STATE OF TEXAS COUNTY OF
TRAVIS

AFFIDAVIT OF DANA DEBEAUVOIR, TRAVIS COUNTY CLERK

BEFORE ME, the undersigned authority, on this day, personally appeared Travis County Clerk Dana DeBeauvoir, who, after first being duly sworn, states the following under oath:

"My name is Dana DeBeauvoir. I am over twenty-one years of age, I am of sound mind, and capable of making this sworn statement. I am the elected County Clerk of Travis County, and have served in this role continuously since 1987. I serve as the Chief Elections Official for Travis County. The facts stated in this affidavit are within my personal knowledge and, under penalty of law, are true and correct".

"As the County Clerk, I am responsible for the administration of elections in Travis County. Accordingly, I conduct elections for Travis County and for other governmental subdivisions who contract with my office to conduct elections on their behalf, including the City of Austin."

"When we enter into a contract with a governmental subdivision to conduct elections on their behalf, the subdivision pays a share of the cost of conducting that election, based on the number of registered voters that they have within their jurisdiction. That cost share is the same regardless of the number of races or measures that the entity has on the ballot."



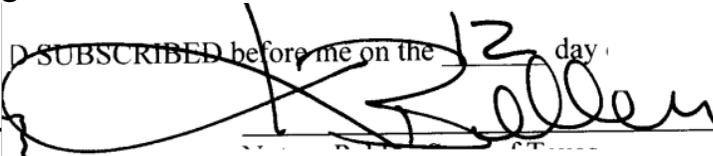
Further affiant sayeth naught."

Dana DeBeauvoir Travis County
Clerk

THE STATE OF TEXAS COUNTY OF
TRAVIS

On this day personally appeared the person known to me to be Dana DeBeauvoir. After I administered an oath to her, she read the above and foregoing Affidavit of Dana DeBeauvoir, Travis County Clerk, and stated that she had personal firsthand knowledge of all facts and matters stated in the above and foregoing Affidavit, and that all facts and matters stated therein were true and correct.

SWORN TO AND of August, 2019.

I SUBSCRIBED before me on the 12 day of August


[Empty rectangular box]

K. BELLEROSE
Notary Public
STATE OF TEXAS
Commission Exp. FEB. 24, 2021

