

The following transcript is provided for your convenience, but does not represent the official record of this meeting. The transcript is provided by the firm that provides closed captioning services to the City. Because this service is created in real-time as the meeting progresses, it may contain errors and gaps, but is nevertheless very helpful in determining the gist of what occurred during this meeting.

City of San José Rules and Open Government Committee meeting.

>> Mayor Reed: I want to call the meeting to order. This is Rules and Open Government Committee meeting for November anti, 2009. Any changes we need to make to the agenda order? If not, okay. I'll take up the review of the November 24th final agenda of the council which is easy to do. No meeting next week. Those of you who stayed with us very late yesterday get the bonus of having no meeting next week so that's a good thing. December 1st council meeting. Any changes on page 1? Page 2 or 3?

>> Councilmember Pyle: Mayor, adding 1.4 in the ceremonial items.

>> It is on the add sheet.

>> Mayor Reed: So we'll have an addition on ceremonials. There is also my request to add the San José 2020 resolution which is noted on our agenda so we'll come back to those. Anything else on 2 or 3? Page 4 or 5? 6 or 7? Page 8 or 9? Anything on 10 or 11? 12 or 13? 14 or 15? 16 or 17? On to land use stuff, 18 or 19? 20 or 21? Or 22? Based on the length of the agenda, looks like it will be a long meeting. Are there any items that we passed that are likely to not make this agenda, or is --

>> Everything should go out Friday and the early distribution item went out early today. We're on schedule for full distribution.

>> Mayor Reed: We had requests for additions, the one on 2020, accommodation matter, I had a request for Adobe system co-founders, a request for proclamation declaring December 1 world AIDS day, mayor and councilmember excused absence, for Councilmember Campos, that's the amended one, she dropped from the agenda yesterday on a trip, my travel to Washington, request for approval, and then a general plan amendment item that needs to be on there which we eventually take action approving all of the general plan amendments at the end of the process. Councilmember Pyle had the one ceremonial she wanted to add. Anything else?

>> Lee Price: Mr. Mayor, if you wouldn't mind please, Lee Price, City Clerk. I had one other item, I'm sorry there is nothing on paper for this one. It is a consent calendar item for December the 1st. It is a resolution declaring weeds a nuisance and setting a public hearing for January. This is an item that does need to go forward, and with your permission I'd like to go ahead and add it now.

>> Mayor Reed: Add it to the consent calendar?

>> Lee Price: Yes, please.

>> Mayor Reed: Speaking of the consent calendar, we talked about trying to get all the committee reports onto the consent calendar instead of the agenda. When do we think we will be able to do that?

>> Lee Price: Mr. Mayor, the city attorney and I have been working with your staff on the rules of conduct resolution, and I think we're going to be bringing that forward to the committees next week, or the week after.

>> Mayor Reed: Okay.

>> Lee Price: Next week, and that's an item for your consideration at that time.

>> City Attorney Doyle: That's how we formally propose to make the change. But if the committee wants to direct that the reports for this agenda be moved into consent, that's perfectly appropriate. With the exception to the cross-references, which would be separate agenda items.

>> Mayor Reed: I'm happy to do that, although this agenda's going to look a lot different if we start moving all those things around. It might be a little bit confusing to the people that are looking at it. So why don't we just hold off. And make it easier to track everything through the agenda process, if we don't change in mid stream. Any other changes or additions? I think those were all the written requests I had. Anything else?

>> Councilmember Pyle: Move to approve with additions.

>> Councilmember Chirco: Second.

>> Mayor Reed: Motion is to approve as amended. All in favor? Opposed? None opposed, that's approved. Taking us to the redevelopment agency agenda, nothing for November 24th. Is there a recommendation to cancel the December 1st?

>> Mr. Mayor, that is correct. We have no items for December 1st and won't have until December 8th so we cancelled the afternoon session of the agency on December 1st.

>> Mayor Reed: There will be plenty to do on December 8th. That's the budget discussion. So is there -- we need a motion to cancel, then.

>> Councilmember Pyle: So moved.

>> Councilmember Chirco: Second.

>> Mayor Reed: Motion is to cancel that meeting for December 1st. All in favor, opposed, none opposed, that's approved. Upcoming study session agenda, December 3rd, special city council meeting,

actually, to do interviews for boards, commissions, appeals hearing boards, civil service commission, federated retirement, police and fire retirement. What's the head count in terms of number of people that we'll have to interview for that?

>> Lee Price: Mr. Mayor, there are seventh applicants for the appeals hearing board. With civil service, federated retirement board and the police and fire retirement board, you have one each. So you're looking at ten interviews for the morning.

>> Mayor Reed: And we're scheduled from nine to --

>> Lee Price: Nine to noon here in the committee room.

>> Mayor Reed: Are we going to do it in here?

>> Lee Price: We're going to do it here in the committee rooms, yes, sir.

>> Mayor Reed: Any discussion on the agenda? Is there any reason to look at the order of interviews and try to tell people when to come? We have seven -- if we do the appeals hearing board interviews first, that's seven. That's almost two hours there. I hate for everybody else to show up and have to sit through all of that waiting to be interviewed. Maybe we could tell everybody else not before 10:30.

>> Lee Price: Okay.

>> Mayor Reed: In case some of these people drop out and we go faster.

>> Lee Price: Or we could flip them, we could put appeals hearing board at the end. It was -- alphabetically, that's the way we placed it, but we don't have to place it that way. We could flip it, if you like. There's going to be retirement board meeting in the afternoon. There are a couple of councilmembers who need to be available for that, as well.

>> Mayor Reed: If there's one each for those, we'll be done with that in probably, maybe a half hour, 45 minutes. So if we just tell appeals hearing board interviews, 9:30.

>> Lee Price: Okay, so we'll move them to the end.

>> Mayor Reed: That would work. Any other changes on that?

>> Councilmember Pyle: Move to approve.

>> Councilmember Chirco: Second.

>> Mayor Reed: Motion is to approve, all in favor, opposed, none. Legislative update is our next item.

Nothing from the staff, state and federal. I'd just like to add, that tomorrow -- actually tonight I'm taking the red eye to Washington to spend a day -- well, 12 hours, anyway, in Washington, because I'm coming back Thursday night. The reason I'm taking the trip is, I have a chance to go into the White House and talk to some of the president's economic advisors, and I want to go in and complain about the lack of stimulus funding that's coming to California and Silicon Valley and a few other things that affect our economy. And I figure if I have a chance to go complain in person, I should take it. I'll thank them for the money we're going to get, we'll take the money, but when you look at what's happened across the country, for example in electric -- and this is one of my prime complaints -- in the electric battery and vehicle grants, 25% of the patents over the last ten years have come out of California. None of the stimulus money came to California. I think there's a problem with that. I'd like to have a chance to talk about that. I did talk with the vice president about it a couple of weeks ago, but you know, this is another opportunity. So that's why I'm going, and I'll report back to the committee next week, probably. Hearing -- meeting schedules, item E-1. I have a memo recommending that we set some additional study sessions for the full council to discuss and engage with stakeholders ideas for addressing the city's structural deficit and new revenue ideas. This is a different direction, little bit different direction that I had previously recommended, in large part because everybody on the council wants to be engaged in this, and I think we have some opportunities to do some study sessions in a little bit of different way that will really engage our stakeholders and let the entire council have the benefit of that engagement process, instead of trying to do a subcommittee. So while I'm not trying to pick the dates yet, it's really a concept to do that and improve the conceptual. Probably two additional study sessions for the council to get engaged. Between now and not quite sure what the time schedule's going to be, but basically in the January-February sequence of when we're engaged in the budget process actively. Because we're running out of time in December to do those things. But I'm open to suggestion on when we do those but I just want to get the concept in front of the committee and see if that's the direction we would like to go. I do have a memo that I circulated on it. I have no cards from anybody who wants to speak on this. Anything from the committee?

>> Councilmember Chirco: Move approval.

>> Councilmember Pyle: Second.

>> Mayor Reed: The motion is to approve the recommendation, and we'll ask staff to look at some dates when we can possibly do this, and that will come back to the committee with the dates, and we'll look at the agendas and how we run the meetings as part of our regular work here. All in favor, opposed, none opposed, that's approved. Public record, are there items from the public record the committee would like to pull and discuss? Now that I've already complained about the money we're not getting from the federal government, I want to thank the Department of Energy. There's a letter, Item B, from the Department of Energy, congratulating us on the Solar American Cities special projects award of \$900,000 for seven different projects. I want to thank the staff for their hard work to get those grants in and to be successful. And they've also invited me to travel again, sometime in the future, so I'll probably have to do that, since they're giving us the money.

>> Councilmember Pyle: Congratulations.

>> Mayor Reed: Other items in the public record the committee wants to talk about?

>> Councilmember Pyle: Move to note and file.

>> Councilmember Chirco: Second.

>> Mayor Reed: Motion to note and file? I thought I had one more, let me just check. Item M is a letter from community based organizations to deputy regional director Michael Burns, requesting information to ensure an accurate census count. There is a reference what is San José doing on the census count. I'd like staff to respond, to describe the relationship we're having with the census bureau to get a good count. Anything else? Motion is to note and file the rest. All in favor? Opposed? None opposed, that's approved. Next we have appointments to boards, commissions and committees. Councilmember Constant.

>> Councilmember Constant: I just wanted to ask the clerk. I know I was late in getting mine in to the seniors commission. Is that -- will those be able to add in rules in lieu next week to come through with the rest of these or has that got to wait until we meet again?

>> Lee Price: I think we built in enough time to still get it before the council by the end of the year. So I think we're safe for the next committee meeting on the 2nd.

>> Councilmember Constant: My apologies on that. My motion is to approve recommendations 1 through 5.

>> Mayor Reed: The motion is to approve all the recommendations. Let me describe what they are. Reappointment of James Smith and Miguel Olivo to the small business development commission. Recommendation of Councilmember Nguyen. Ramiro Torres on the historic landmarks commission by Vice Mayor Chirco. Erica Schefer, Keith Morales, Kathleen McDavid to the Early Care and Education Commission by Vice Mayor Chirco. Francisco Rodriguez to the Disability Advisory Commission by Councilmember Pyle. Raj Bains, Megan Young, Jaime Contreras and Margaret Akdeniz to the Human Rights Commission, recommendation from I think Councilmember Chu. Motion is to approve all of those. All in favor, opposed, none opposed, those are approved. Item H-1, a verbal report on an item we previously considered, referred to staff for some work regarding cultivation of medical use of cannabis in San José. This is not in front of us for substantive decision, this is a status report from staff on the referral that we have given them to respond to a request to do something with our zoning code. So this is a verbal report only. There is no staff report that I know of on it.

>> City Attorney Doyle: No, there isn't.

>> Mayor Reed: We do have some requests to speak. This is not about substance, just a verbal report, that's why we're here.

>> City Attorney Doyle: This is getting to get to the process issue. One of the questions that came up last -- two weeks ago in the Rules Committee, the committee has referred it to staff, staff has said they would have to come back with a work plan assessment and is in the process of doing that. But one of the immediate questions was, the City of San José had an ordinance back in 1998 that allowed for certain dispensary models to be -- dispensaries, it was under what we call a dispensary model. And that was not -- when the zoning code was changed back in 2002 that was not included as part of the changes to the zoning ordinance. So we do not have a process to permit these operations. In researching the law, there's a lot going on currently. Members of my staff and myself included have gone to some recent courses on developments in regulation. The gist, it seems to be the state of the law is if you are a cooperative or collective, it is something that is permitted under state law but your land use authority is your land use authority. You're not preempted either expressly or impliedly, and there's recent case law as late as August of this year that reaffirms the right of local governments to control the zoning issues and land use decisions. You also, probably under your police power, have certain rights there as well. So we're working

on that. The short answer on the old law, the old ordinance is, we just can't dust it off and bring it back. And so we will be working with the Planning Department to come back with a proposal. If that's what the -- you know, in essence, that will be part of the work plan. And then the committee can direct us where to go from there.

>> Mayor Reed: Okay, there are a couple of questions. One is, see if I'm correct. Is if something is illegal, you can't do it as a matter of right as a zoning code. Is that part of our zoning code or --

>> City Attorney Doyle: No. The question is if it's not expressly permitted, can you do it? And the case law is, no. If it's not permitted, it is prohibited. And it's -- an the city would treat it as a nuisance per se if it's not illegal use. So it's only illegal use if we expressly permit it under a zoning code.

>> Mayor Reed: What if it's illegal under federal law?

>> City Attorney Doyle: Then that's the question and that's been the \$64,000 question that all localities have been dealing with. I think the reason this issue's probably back on the table is the United States attorney general's recent comments about nonenforcement. It's really federal law, and the federal government is responsible for enforcing federal law. But I don't believe cities would be held liable to permit it but again, that's probably within some -- your land use regulation that if you want to treat all illegal uses under state and federal law or federal law I should say as not permitted then again, that would be appropriate. But I don't think you're totally precluded just because it may be illegal under federal law.

>> Mayor Reed: Well, what I'm trying to get at is looking at the apparent rush to do moratoriums in other cities. Santa Cruz has one in process, Los Gatos has approved one, Gilroy has approved one, Milpitas has approved one, L.A. has approved one, currently limited by injunction. Sacramento has approved one, Visalia's approved one, Walnut Creek's approved one, and Anaheim, they have approved a ban. And trying to figure out from our point of view if we need to get into the moratorium business, trying to deal with whatever the problems might be, that other people are perceiving, or if we are in a position where this is not a permitted use and so if somebody establishes one and we later change the zoning code either to prohibit or permit them, they are not a legal nonconforming use, because when they were established, they weren't legal. So if that is the case there is no need for a moratorium because nobody can get any legal rights against whatever is is the ultimate decision, is that right?

>> City Attorney Doyle: I think the -- yeah, in our view it's if you're not a permitted use you're illegal and it is a nuisance per se and we would pursue it as such. But I recognize the fact that a lot of cities are going down the moratorium route and I think it's sort of a belt and suspenders approach, and it's essentially asking for a time out while they decide what to do. I don't know if we would ask for a moratorium, at this time I don't but we would work with the planning staff and come back to the committee in a few weeks or a month or so to make that final recommendation.

>> Mayor Reed: I know some of the concerns in the city is the location of them. Even if they're appropriate in the zoning code, they don't want dispensaries in neighborhoods, any more than you want to have liquor stores or other kinds of uses that are not appropriate for neighborhoods. You don't want your next door neighbors having businesses running out of houses with limited exceptions, so we can regulate a lot of things. What I'm trying to figure out is if six months from now or a year from now or two years from now, we decide to do something, and we already have people in business in the city, will we have the ability to say you're in the wrong place, or we don't allow that, whatever the council might decide to do, and then be able to regulate them, saying you've got to move.

>> City Attorney Doyle: I think if they're not legal in the first place, they can't capture legal nonconforming status. Their only legal nonconforming is as of this date, they were legal.

>> Mayor Reed: Then the other question is -- I know you haven't had time to study this -- but I think it's important to note what the experience has been in the other cities, Los Angeles, Santa Cruz, in particular in Anaheim, that have led them to take action after the -- after the fact, in some cases. So that they're aware of the issues. Anaheim I know has done a study of what are I guess maybe the side effects on the community of the dispensaries. Because I think that's an important issue any time you're looking at a zoning question is, what's the impact on the naked. And Anaheim apparently has looked at that and decided they were going to ban them totally. So I think those are issues that need to be considered as we're figuring out what to do.

>> City Attorney Doyle: My understanding, Anaheim's in court on those issues. So the different cities are responding to different issues and we are following those and that will be part of our report back.

>> Mayor Reed: Do you know if the league of California cities or any of the statewide organizations have done any work to try to figure out what the issues are for cities generally?

>> City Attorney Doyle: Yeah, and I attended a presentation, it was a league presentation essential city attorney's seminar. And so within the organization there are presentations and we are collectively trying to share information and experiences. But you know there is still a lot of information we have to get back with.

>> Mayor Reed: Okay, any questions from the committee for the staff? Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. We spoke at length on this last time, so I'll give the reader's digest, people with painful afflictions, cancer and AIDS, pass the 1996, that's the primary, 2, whether we do anything or not, they will come because we have this limbo of not having an ordinance in place. And we're going to be at I believe an awkward status in the future by not having a council discussion on the item. You know it's been very well pointed out that Los Angeles was unable to have that council discussion, and then the market took place, and now they have 600. I think it's important, as our City Attorney mentioned, that we control land use. Well, then, let us as a council decide where they should be and shouldn't be. There are limits to those. Somebody brought up Santa Cruz, for example, they passed a moratorium. To -- because 75% of the people were not from Santa Cruz, they felt two dispensaries for 59,000 people was enough. In our case, of having a population of a million, we have to figure as a council what that number might be. We all have work plan things, but again, we want to get ahead of this before it gets too problematic, in any sense of the way. And finally, if we don't have an ordinance in place, it's really difficult to regulate whether it is the location or it's the matter of do we allow baked goods, is consumption onsite or not? My proposed ordinance would not allow consumption onsite. Also, the idea is to obtain revenues for the city, whether it's a straight tax via the business license and transactions, or it's set up as a fee system like we have for the card clubs. That needs to be the council discussion which would bring revenue to our city. And that number, I guess depending on how many dispensaries you have, and what that total volume is. Will depend on how much is raised. And finally, what could thwart all cities' abilities, or at least the city of San José's ability to bring revenue is if dispensaries and other municipalities, San Francisco, Oakland, et cetera, are allowed to mail the subject, all of the tax revenue and benefits would be to those cities and not to the City of San José. I would simply ask that the Rules Committee allow this to go to the council to have the council discussion to decide if they would want to go further, but in the end, in the interim period it's going to be problem take. Because of not have an ordinance in place.

>> Mayor Reed: Let me speak to the limbo. I don't think there's any limbo based on what the city attorney has said. They're not permitted, they are not allowed. And if they're not permitted, they're not permitted. Somebody who opens one is doing it not with a permit, not lawfully, and we could regulate that after the fact by shutting them down our doing whatever enforcement might be appropriate for anybody that opens up any kind of a business that's not permitted under the code. So I don't think we're really in limbo. There may be a perception that we're in limbo but from the legal standpoint I don't think we're in limb bone from what the City Attorney described.

>> City Attorney Doyle: That's correct.

>> Mayor Reed: A very interesting OpEd piece that Alberto Torrico had in the paper, since marijuana is unregulated, vast differences in quality, potential for it to be contaminated by a variety of poisons, such as weed control poisons and other things that nobody would want to eat, drink or smoke. And if we were -- we're just looking at it as land use. Do we need to look at those quality issues as part of our land use, or if we can have a land use decision, you can sell it however the state allows you to sell it, and we have no role in making sure people aren't getting bad drugs from a dispensary.

>> City Attorney Doyle: I don't know and I'll let Laurel address from the land use standpoint. But clearing, in title 6 is reality where the police get involved in various regulations of businesses, let me just throw out, massage parlors, et cetera. They need to do background checks. So I don't know if it's the quality control in terms of the product, but at least quality control in terms of the operation, the people that are involved in the cooperative board or the collective. And making sure there's some kind of regulation independent of the land use regulation. That's possible, again, that's something we have to come back with.

>> Mayor Reed: I would hope State of California with will look at this as suggested by Albert Torrico, they are the ones that do this statewide and lots of other issues. I don't want people who are just getting relief from their pain, contaminated with other things, we would never accept that if we go to CVS or Los Angeles or Walgreen's. If they are sedge contaminated drugs they would be run out of the city. I hope the state will step up so we don't have to get into the quality control business on marijuana or any other drug for that matter. Any other questions about the work planned and the timing? Laurel?

>> Laurel Prevetti: Mr. Mayor, Laurel Prevetti, assistant director of our Planning, Building, and Code Enforcement. Just a comment for your consideration as we move forward we expect to bring to you a full work plan assessment in early 2010, in January. This -- there are a lot of issues, as Rick has identified, there's also clearly a lot of public interest. So we want to make sure that we've thoroughly identified an engagement strategy should council decide we want to move forward with this and we also want to make sure that council has before them the tradeoffs of what would be the work that might not get done, so council can have the benefit of all those choices when this item comes back. Thank you.

>> Mayor Reed: One other issue, I think we talked about it last time, focusing on the revenue potential side. Look at the Planning Department's workload and the fact that I think there's one planner left to do ordinances. This is a potential revenue source, so we might look at it differently than some of the other work. But any actual revenues, beyond the cost of our administering whatever we do, would probably have to go to a vote, is that correct?

>> City Attorney Doyle: The regulatory fees would be cost recovery only. If you wanted to have -- I assume they may be subject to the current business tax but if you would like to have additional -- card rooms have a unique section within the business tax framework. If you want to do something like that, yes, you have to go to the voters.

>> Mayor Reed: That factors into the timing of any potential revenue. City Manager.

>> City Manager Figone: Mr. Mayor, if I could have Laurel just clarify for me, because I want to be sure we manage expectations. In coming back with the framework and the scoping, it is my sense that we will raise the issues for consideration and have some early indication of direction of travel. But we may not have all of the answers. Is that correct?

>> Laurel Prevetti: That's correct. This would be a workload assessment in terms of what are the key questions that staff would need to analyze, in the process of developing an ordinance for council consideration. And should council direct us then to do that, it would probably take many months, is my guess, before we would actually have a completed ordinance for your consideration.

>> Mayor Reed: Okay, anything else from the committee? I have some requests from the public to speak. Councilmember Constant.

>> Councilmember Constant: Just have a process comment. We talked about this last year at Rules. When we talk about some of these major policy issues, sometimes they come to council for direction before workload assessments are done, and before staff work is invested, to get a flavor for what direction the council may or may not go. Other times they go for workload assessments first. I really would like to see, as we go forward into next calendar year, that we look at that process and kind of come up with one process, so that as individual councilmembers are contemplating policy issues like this, there's a defined direction it goes. Because we've gone at least two or three different ways in the last year and a half, two years, and I think it would just help us kind of reconcile the discussions, and have a better expectation for us and for the public as we move forward.

>> Mayor Reed: Any other questions or comments from the committee? Okay, I'd like to take the public testimony now. Remember we're not making a substantive decision here today folks. I know you have substantive recommendations, we've heard those. Pat Koop or Knoop and then Daniel Hoveland.

>> Thank you for taking up this important issue. I just wanted to say, there is a lab in Oakland to test cannabis for impurities, KC content and everything so that's out there. But while medical cannabis collectives are a new entity for San José, there are very self models out there that San José can take a look at. And for me at least the goal of any ordinance if the city council goes that way, should be, ensure that they're safe, reliable, and sanctioned source of medication for legal patients. And at the same time, protect the community from nuisance activity or other harm that may result from the improper operation of any organization. It's also important, I think, to remember that medical cannabis is legal, under California law, and any regulation that you develop should be for -- to help people get legitimate access to medication. I get nervous in front of big crowds. But the reason policy makers should approach the issue of collectives from the standpoint of regulating, it's a condoned and legal activity, and it's also a great source of revenue for the city in trying times. Thank you.

>> Mayor Reed: Daniel Hoveland followed by Erica Montgomery.

>> Good afternoon, mayor, council, fellow citizens of San José. My name is Daniel Hoveland, I'm from District 7, I'm business member, taxpayer, and member of ASA, Americans for safe access and I just wanted to say thank you for your time and consideration in this matter. I think it is highly important that we try and do this expediently, without this ordinance in place there will be a bit of chaos I believe of people trying to open like you say without proper legitimate sources. That being said, ASA would like to help in

any way we can making this process as expedient as possible creating the best possible ordinance, while other cities can look at us as the model example and basically create the -- you know a good -- the right thing for everybody else to look at, thank you.

>> Mayor Reed: Erica Montgomery followed by Paul Stewart.

>> Good afternoon, Mr. Mayor, councilmembers, other dignitaries. My name is Erica Taylor Montgomery, and two weeks ago I spoke to you strictly as a patient, who suffers from fibromyalgia and severe chronic pain. Today I'm speaking to you as a spokesperson for the San José cannabis buyers collective. It's the very first cannabis collective to open in the City of San José, about four months ago. And I bring information that you might not have known that has happened in the past two weeks since the committee last met. In that time originally there was only the one club, SJCBC, now there are five clubs that are operating today I understand what the mayor says that we are not in a legal limbo but certainly with five clubs springing up and another on the way, I think this is also to speak to the issue of quality, I did want to let you know that at the SJCBC every single product that's sold at the collective is tested at an independent lab. We believe that quality is extraordinarily important and can speak to the mayor's concern about contaminated products and we do prevent against that. Lastly I'd like to state in terms of the revenue issue, the SJCBC two weeks ago paid a sales tax bill of \$13,000 and that was being in business just three and a half months. There is a revenue issue for the city to consider as well. Again, I thank you for bringing this issue to bear, thank you very much.

>> Mayor Reed: Paul Stewart and then George Lu.

>> Mr. Mayor, members of the council, my name is Paul Stewart. I am a district 7 resident, formerly a District 1 resident. I am also a taxpayer and I would urge you to move forward in your direction to staff with putting an ordinance together to help provide access for relief of those suffering from terminal illnesses and debilitating diseases. That's the primary health, safety and welfare issue the council should be concerned about. Councilmember Oliverio made a good point that they will come one way or the other. It is better to have it regulated and regulation should come sooner than later rather than put an arbitrary roadblock into it. For some of the ordinances that you note Mr. Mayor, putting a moratorium, while they study such issues, there are cities such as West Hollywood and Oakland that are moving forward and making a significant amount of revenue off business licenses and business taxes to help reduce deficits that those particular municipalities have accrued over the years. One of the things I would like to offer, is we would ask the committee to direct staff to hold a stakeholders meeting to perhaps sit down and talk about some of the more salient issues that have come up as part of your questions. You can frame the ordinance I would be happy to serve on that stakeholders committee or task force if the council or the committee puts it together, as would other members of ASA I believe and other citizen representatives working with you to do that. You should recognize that we are a broad spectrum of citizens that include parents, business leaders, college students, attorneys and others, just as those who are perhaps opposed to this concept represent as well. Our main concern is providing all range of medical access to medicines, irrespective to individuals who need that help . Thank you, I'd be glad to answer questions.

>> Mayor Reed: George Lu is the next speaker, Michelle Hobie after that.

>> Hello, Mr. Mayor and councilmembers. My name is George Lu. I've been a South Bay resident my whole life and I've attended San José State. I was injured in an accident and I was at Santa Clara valley medical. I went through all the normal channels for prescription medicines to ail in my disability and my ailments neurological pain. have been recorded to be addictive and have caused me more pain than good. I just hope you can consider and I do appreciate your efforts in this, thank you very much.

>> Hi, my name is initially Hovie. I'm a provide being its citizens a safe and secure place to get their medical marijuana, because like we just heard it is a lot safer than alternative forms of pain management and I support any patient who is looking for a holistic form. To help them better their lives.

>> Mayor Reed: Tina Morrill followed by Laurie Matthews.

>> Hi, good afternoon, mayor and city council.

>> Mayor Reed: If you squeeze the handle, that will -- that will work too.

>> How is this? I'm dangerous with a mic though. I just wanted to say that I really think that this issue is extremely important and needs to move forward as quickly as possible so I urge you to, you know, get the wheels in motion as best you can to do that. So thank you very much.

>> Mayor Reed: Laurie Matthews then Van Hon.

>> Good afternoon, my name's Laurie Matthews, I'm a member of this district. I've lived in San José for the last 15 years. I also would like to see this issue moved forward as quickly as possible. These clubs

will also come. I'm also a chronic pain sufferer, as well as a recovering addict, have not taken any drugs or alcohol in well over a decade. I have a severe spinal injury that caused me to take narcotics for quite a long time. They don't work for me. They don't work in general as a pain reliever and the only way that I've been able to find any relief is through medical marijuana, because it's not available here in San José other districts are you know getting my money. I think that San José could use the revenue. I also notice that there's a lot of city buildings around, downtown, that have been abandoned, that could be put to good use and I'd just like to say thank you for considering this issue.

>> Mayor Reed: Ben hung followed by Carla Nespoli.

>> My name is Van Hove, I'm a long time business other than, resident and father of two in San José. I'm opening a holistic healing center and medical cannabis collective. I support your efforts in passing an ordinance regulating the medical marijuana. I look forward to providing a safe comfortable and secure environment for patients to secure their medicine, other healing modalities.

>> Mayor Reed: Carla Nespole.

>> I'm Carla Nespole, I'm executive director of the holistic pain management institute and cannabis buyers collective and I do support an ordinance for safe and regulated access to cannabis. And as our organization is a nonprofit I look forward to working with the community as a whole in obtaining our outreach objectives. Thank you and good luck in D.C., mayor.

>> Mayor Reed: Thank you. Roger Gordillo and then Keith Stevenson.

>> I've lived in the South Bay for 45 years. I was unfortunate to get sick. Diabetes. Cannabis has helped me very much. It's taken me off 18 pills a day. So it would be very appreciative if we could have one locally. Get it off the streets or avoid going all the way to Oakland, San Francisco, Santa Cruz. It would be very, very -- it's hard for me to drive. And I would be very appreciative if you can do something soon for the patients. Thank you.

>> Mayor Reed: Kay Stevenson. That's the last card I have. If anybody else wants to speak, please get a card in.

>> Good afternoon, council, as well as the mayor, my name is Keith Stevenson and I am the executive director of the purple heart patient center, a licensed medical cannabis dispensary in the City of Oakland. We've been open three years and I'd like to thank you for giving the residents and the patients of San José the opportunity to have medicinal cannabis in their community. We have many patients who come from the South Bay to Oakland. I would greatly like to assist the city in emulating the model that we have in Oakland and also creating synergistic opportunities that have an economic benefit to not only the city but also the stakeholders of the community. I want to thank you once again for your time and I look forward to working with the City of San José in bringing this forth. Thank you so much.

>> Mayor Reed: Thank you all. That concludes the public testimony on this item. I had another question for the City Attorney. Would you please talk about business licenses and whether or not you get any entitlement or any rights just because a business license is issued in San José?

>> City Attorney Doyle: One of the frequent misnomers, is that paying the business license tax qualifies you to be licensed to do business in San José. The tax is strictly a revenue tax. It is a general fund tax and the money is collected just for general purposes. It has nothing to do with regulation of businesses. It is a common term, business license tax but it is not giving someone a license to do business. You still have to meet the necessary planning, zoning and other health and safety regulations that may apply. So that's something that is -- is mistaken frequently but the short answer is, you're not licensed to do business just because you pay the tax.

>> Mayor Reed: Anything else from the committee on this? I think we've got a work plan coming back. Councilmember Oliverio.

>> Councilmember Oliverio: Mayor Reed and Rules Committee, would coinciding with the work plan would we be able to schedule a date for this to come to council like January, early February, to where the work of the staff can be evaluated by the entire city council?

>> Mayor Reed: I think it's too early to do that until we see what the workload assessment, the workload looks like. And we could say January, February, March, we really don't know until we've seen the workload. It would be just a guesstimate.

>> Councilmember Oliverio: Is there a day certain that this will come back to Rules about?

>> Mayor Reed: Early January I think.

>> Laurel Prevetti: Early January. I don't know what the Rules Committee -- typically, some of our early meetings in January are cancelled, sometime early in January we can be back to rules.

>> Mayor Reed: That concludes the work on this item. There is no action to be taken for today, but we will be back. We have a request from the administration to defer a discussion of contract authority to December 2nd . And then -- so we'll do that. Next item is to approve the addition to parks and recreation commission work plan. Review of Los Alamitos Creek Trail community meeting held on October 28th. Councilmember Pyle, did you want to speak on that one?

>> Councilmember Pyle: Thank you, mayor. We met with the community, and this is mainly what has come forward in reference to the concerns regarding the trail, not just Los Alamitos. This would affect all trails within the city. As you know, there was a fatal accident that occurred on September 18th. And since then, the fact that we must share trails has become a common conversation. And there is a push to get some kind of rules or understanding in place, so that we can move forward and avoid future mishaps, especially those that lead to the death of a person. So that is why I would like to bring it forward to get the process started.

>> Mayor Reed: So this is going to go to the parks and recreation commission?

>> Councilmember Pyle: That's correct.

>> Mayor Reed: For work. I would like to make sure that when it goes, they think about the county since a lot of our trails goes through city and county and city and county and Water District property as well. So if we had to adopt a rule or anything in the city it doesn't make sense unless we're also getting the county engaged in it too. So it makes sense as part of that look. Councilmember Constant did you want to --

>> Councilmember Pyle: So moved.

>> Councilmember Chirco: Second.

>> Mayor Reed: Motion is to refer it to the parks and rec commission. All in favor, opposed, none opposed, that's approved. Item 4, the guide for council commissions, I'm not suggesting we elevate that oops everyone understands the parameters for invocations, this is sort of a best effort to describe what the current practices are as opposed to make any changes or anything. So if councilmembers don't like current practices this might be a time to talk about them. Councilmember Constant.

>> Councilmember Constant: I think the majority of this I agree with. The only concern I have is, for the last council meeting in a month you could end up having to have commitments almost 45 days in advance. And I was wondering if it might be easier to do it on a kind of like a rolling three-week or four-week period, where at least by the time we review the first draft here at rules, because like if you have a meeting, say, on the 31st of January, and you have to have it in by the 15th of December, that's a long lead time to get a confirmation from somebody. So that's my only concern.

>> Mayor Reed: Are you saying it would be like two weeks prior or three weeks prior or some -- prior to the meeting?

>> Councilmember Constant: Right, versus using the preceding month because of the way meetings follow. That's my only suggestion.

>> Mayor Reed: The old policy which is made reference to, needs to come out, which has to be in January for the whole year. We haven't been following that for a while. Judy.

>> Councilmember Chirco: Number 5, for the entering and exiting, I'd say that's a little short. I'd say no more than ten minutes, because it includes entering, exiting and take down. The performance is usually three to five minutes, if you have a group that's singing or a musical group. I would say the performance no more than five minutes and then five minutes for the enter, exit and take-down. I'm just trying to think some of the invocations we've had in the past.

>> Mayor Reed: Well, some of the invocations we've had in the past, in my opinion, were too long. They were definitely longer than five minutes, probably quite a bit longer than ten minutes, in some cases, but we have been by and large probably 90% of them are less than five minutes. What I'm looking at here is, that's what we're trying to do including the introductions. Short introductions, longer performance.

>> Councilmember Chirco: I like that idea.

>> Mayor Reed: Total elapsed time I'm trying to control here first half hour of the meeting between the invocations and ceremonials, if we have a 15-minute invocation we're going to be way past it, if we have a whole bunch of ceremonials.

>> Councilmember Chirco: I think that's too long, 15 minute invocation. That was the only question I had.

>> Mayor Reed: What I was getting at with item number 7, which is variations from the guidelines to be approved by the Mayor or the Rules and Open Government Committee, is if somebody has something long, then we should talk about it beforehand. And if we want to do it work it with the ceremonials so we don't end up with one period of time and that's kind of the current practice. If somebody's got something

extraordinary they talk to us and we try to work it out. It could be a topic at Rules and Open Government committee as well. This is sort of the standing invocation.

>> Councilmember Chirco: I'm not opposed to that. I'm thinking of the group I had from Dartmouth, there were students, chairs and instrument, instrument cases, there was like this kind of collective --

>> Mayor Reed: I think they were done in less than five minutes.

>> Councilmember Chirco: But getting their stuff out was interesting. If they're guidelines, that's not a problem.

>> Mayor Reed: The main thing with the stuff, the staff knows in advance that there's going to be stuff that they can deal with it in some fashion and be prepared to move it in and move it out. It's that early warning that's really helpful. So would these be okay if we made it two weeks -- how does that work with the staff if you get it two weeks before the meeting that's a good rolling deadline. Instead of the 15th of the month preceding.

>> Councilmember Chirco: Truth is, sometimes we're still looking.

>> Mayor Reed: I always assume that councilmembers are going to deliver the invocation, if they don't have somebody.

>> Councilmember Chirco: I'm look forward to the month of December when the mayor gets to has his.

>> Mayor Reed: That's a short month.

>> Councilmember Constant: I'll move for approval if that's what we need.

>> Mayor Reed: Motion is to approve with the two weeks rolling deadline for that. Any further discussion on that? All in favor? Opposed, none opposed, and of course since these are rules committee guidelines we can change them any time we think it's necessary just as we review the agendas. Next item is the City Auditor's report on the review of American Recovery and Reinvestment Act first quarter reports.

>> Sharon Erickson: Good afternoon, Sharon Erickson, City Auditor. Very briefly, through September 30th of 2009, the city has been awarded over \$77 million in recovery act funds. We have spent approximately \$6.1 million, approximately \$3.2 million of that has been reimbursed or advanced to the city. Thus far recovery act programs have created approximately 250 full time equivalent jobs in the City of San José. Based on our audit work, the city did meet the recovery act transparency and accountability requirements for quarterly reporting as of September 30th. The auditor's office will continue to monitor recovery act spending and ensuring controls. Additional information and length regarding federal guidance and the City's recovery act expenditures are attached. And I think we're happy to answer any questions. With me is Ashwini Kantac from the City Manager's office. .

>> Mayor Reed: Page 5, 1 and 2 with the activity and there's a column called award and then reported expenditures and reimbursements and number of jobs. Trying to figure out if award is a term of art. And because I keep getting asked, by lots of media, you know, how much money are you getting, how much money have you got, how much money were you promised and all the terms mean something a little bit differently. If you take both of those exhibits the award total is \$62 million. Now, we also have money that we expect, based on some formulas that we've run. And I have been using \$76 million, is what we've been sort of promised. The expenditure I understand.

>> Right. And when we mean the awards is when we have an agreement, a signed agreement, executed agreement and then we don't necessarily have the money because a lot of the money is on reimbursement basis.

>> Mayor Reed: Okay, so awarded we know because we have an agreement.

>> Right.

>> Mayor Reed: And the other money that we're thinking about getting hoping to get is still subject to whatever the federal government is doing?

>> Right, so in the case of the ECBG or the recycled water we know we're going to be getting that money but we're still working through the agreement.

>> Mayor Reed: All right, I just got to be accurate when I answer these questions. What about the energy efficiency and conservation block grant?

>> So that one, the 8.8 million we are anticipating because it is formula allocation but we don't have the agreement in place yet. We don't have the based, they have been asked for a lot of additional information which has been provided.

>> Mayor Reed: Well I am going to the White House tomorrow and I got to get these in my head and one of the issues is of course what is the impact of the stimulus funding on the local economy and right now I could say well, we've actually only spent \$6 million, and of a \$300 billion per year Silicon Valley

economy, that's not a very big drop in the pond. But we're hoping to spend more and we have \$62 million awarded and others that have been -- that we'll probably get because we've got a formula.

>> And then we have about, I think about \$41 million in pending competitive application that we're waiting to hear on.

>> Mayor Reed: Applications submitted on a variety of programs?

>> Right.

>> Mayor Reed: That's also a number that moves around as we do more applications. Any other questions on the report? This is very helpful. It's good to have the numbers nailed down as tightly as these are so that's very useful. Nancy.

>> Councilmember Pyle: So it would seem you have to have some front money in order to get this to work. And where do you get that front money? Is it something that could be temporarily borrowed from reserves?

>> Some of the programs actually have capital improvement programs that have those projects planned, which have money that can be fronted and later on used for something else. Each program is working that out within the program itself.

>> Councilmember Pyle: Is that an appropriate use auditor Erickson?

>> Sharon Erickson: Yes, it is an appropriate use. What we front this money so the Feds in their infinite wisdom will offer us say \$100 million over time, we will end up paying the interest cost on that for at least 30 days. Because almost all of these are on a result basis. So no matter how quickly we front the money, we get the money, we get reimbursement it's going to be at least 30 days.

>> Councilmember Pyle: And in that 30 days if we took 100 million, let's go a little better than that. For every million that is spent that would be equivalent of how much interest? Approximately?

>> Sharon Erickson: I'm doing the math on 3%. Somebody knock off the zeroes for me. It could be a substantial amount of money.

>> Councilmember Pyle: 30,000, yeah. Thank you.

>> Mayor Reed: Another really technical question about the airport terminal B checked baggage screening project, we have an award of \$21 million but I also know that we got \$42 million from the federal government. The other part of it came not under stimulus or ARRA process, but if you go out to the airport you'll see the baggage screening system is pretty well installed and moving right along. So we already spent \$20 million some of federal dollars before we even got the ARRA money, even if we haven't spent the ARRA money you look at the project and it's well underway.

>> Right.

>> Mayor Reed: We do appreciate the \$42 million though. Any other questions? City Manager.

>> City Manager Figone: To have Ashwini clarify. The award once we make the expenditure and submit the appropriate paperwork we should expect to receive the reimbursement, is that correct?

>> Yes, because we have the agreement in place so we have authorization to move forward on that project.

>> City Manager Figone: Okay, thank you.

>> Mayor Reed: One thing I want to thank the auditor, and really the whole city staff working on this, the record keeping one of the things he pointed out is the federal government has had to stop some projects, they're spending money in areas not allowed under the package it was very important and that was the point he made to us at the local level to spend it properly and not make bad news for the administration about how all the money is being spent. There has been bad news or criticism of the job count. And so how do you calculate the number of jobs created and what kind of a formula do you use?

>> So on the recovery act, reporting on the jobs, they have some very specific guidelines and it's directly related to the number of hours spent. And that included the 250 jobs include the jobs we created through the WEA program. So that's really direct jobs and not looking at direct and indirect. When we estimate infrastructure jobs we are trying to look at direct and indirect jobs. But that's -- it's not part of the official reporting, is a we're really looking at exactly number of hours spent by our staff as well as our contractors and subcontractors.

>> Mayor Reed: And we're using a federal formula to federal formula just cranking it through the way we're told. We're clearly not exaggerating the number of jobs created. That's anything else on this? I think we just need to approve the report.

>> Councilmember Pyle: Move to accept.

>> Councilmember Chirco: Second.

>> Mayor Reed: Motion is to accept the report. All in favor, opposed, none opposed, thank you for the good report. Next is the auditor's monthly report of activities for October.

>> Sharon Erickson: Very briefly, during the month of October we issued two reports, the audit of animal care and services and status of assignments in process is attached.

>> Mayor Reed: Any questions on the report? I had a question about the timing of the Team San José audits. We have been doing this for a long time and we started like a year late. I think the first one, this was before you which are the auditor, so we started way late in doing the audits. So are we now on the right cycle? It looks like we are because we're auditing into the last fiscal year now.

>> Sharon Erickson: We are currently auditing the last fiscal year. So the financial audit is being completed or has been completed, you are being asked to place this on the Public Safety agenda later in this meeting. We are auditing performance now as of June 30th, 2009.

>> Mayor Reed: And that's the expected cycle?

>> Sharon Erickson: And that's the expected cycle and that completes the five years of that term. So any -- the new agreement has different provisions for performance measures, that's a separate issue. This is against the old agreement, old performance measures.

>> Mayor Reed: The old auditing cycle and the terms of the agreement are the same?

>> Sharon Erickson: It is my understanding the terms of the new agreement include contracting with an outside auditor to conduct that review.

>> Mayor Reed: The timing? I'm looking at a report that eventually is going to get to the council in December or January for last fiscal year. The city and the redevelopment agency do it quite a bit quicker and I know that they're faster than most cities. But is there a way to get the audits closer to the end of the year, or is that just a function of all of the paper and things that have to be put together?

>> Sharon Erickson: Yeah, our problem for ours has been waiting for the audited net revenue, net income, so until the audited statements are issued those aren't issued until November and December time frame. So they're issued within six months of the end of the fiscal year not generally much before that. I'm not as familiar with the terms of the new agreement to know whether or not that could be expedited or whether under the new agreement that will also have the problem of needing to wait for the audited financial statements before they can calculate those performance measures.

>> Mayor Reed: I think it would be helpful if you just take a look at the timing because when you're auditing last year, it's more helpful to do it shortly after the year is over instead of halfway into the new year. And if there's a way to do that, we may want to build it into the future auditing process. Is there anything else on the audit, to this audit?

>> Councilmember Pyle: Move to accept.

>> Councilmember Chirco: Second.

>> Mayor Reed: Motion is to accept. All in favor, opposed, none opposed, it's approved. Next item is a request from Councilmember Liccardo, and myself, to put on the December 8th council agenda a proposal authorizing the Chief of Police to halt the issuance of driver permits where indicators taxicab services and direct the city attorney's to prepare the amendment to the ordinance to make that happen. I have a memo that Councilmember Liccardo and I put out. Comments or questions? City Attorney?

>> City Attorney Doyle: Workload. The comment about prepare the accompanied ordinance, there is no accompanying ordinance yet and it would be something that we could get to the council by the 8th. Although I will ask in advance for a waiver of sunshine. In order to get it on the December 8th agenda, next week being Thanksgiving week, we would have to have it Tuesday to the clerk. We would ask that we not have to get it until the following Monday. It still gives I believe ample time. The memo would probably be out, this memo but the actual ordinance itself I think we'd need that additional time.

>> Mayor Reed: So that would just require a waiver of our ten-day sunshine requirements for the ordinance?

>> Mayor Reed: For the actual ordinance, yes.

>> Mayor Reed: Any other comments or questions on it? I do have some requests from the public to speak. We'll take those first. Anybody who wants to speak please fill out a yellow card. Lockbir Singh Puni and then Julia Miller.

>> Good afternoon, mayor and city council, and staff. My name is lockbir puni. I'm city cabs. I'm not favored this about the cab, if you give us nor permanent permits, I'm okay with the cab but we need more time for succeed, and we don't need the like vote city councils and we want more study for this concern. And this agenda hurt small company, because about the -- about this concern, and we need

more time for this concern. And because we losing out and we want to look no small company and that's all thanks.

>> Mayor Reed: Julia Miller and Bikram Singh.

>> Good afternoon, mayor, councilmembers and staff. We have reviewed your memo, and we feel that it is -- we support the fact that you are trying to help independent drivers. But we feel that our concerns haven't -- solutions haven't been identified to those concerns. And could hurt the small taxicab companies that have been serving the city for some time. We're a little bit concerned to feel that it's being rushed to the full council, because the T&E committee didn't have a full quorum to really address this issue. So we feel if we could get more time to work with staff to get our concern -- solutions for our concerns, we would like it to go back to T&E committee. Thank you.

>> Mayor Reed: Bikram Singh.

>> Good evening, mayor and councilmembers. My name is Bikram Singh, other than alpha cab and California cab. We are here to raise our concerns about this memo. I think we need more time to resolve this issue. When we have many more really complex issues such as the airport. We understand, mayor and councilmember Sam Liccardo's efforts to help drivers, but we need our solutions. The sunset date is too long, the process to replace drivers is not defined yet. Out of 600 drivers there are only a number of drivers that can go to the airport. We made mistake back when we changed the service model. I think we should not go for this and not make another mistake which will hurt certain industry of stakeholders. So I think we need to sit back and come on the table and discuss these issues so this system can run very, very long time. You guys are here to make policies and these policies only help if everybody -- it works for everybody. If it only works for a certain part of the industry, certain people only, I think it's not a fair study or a fair model. And back then, when we did -- I know we're not here to discuss the airport issues but whenever we did it and that was not the right thing to do it and it's really hurting the smaller companies, the overall model is complete failure, it's not working so don't put up something which will kind of fail again in the near future. You guys have a very valuable time. Highly paid employees work on these issues and I think that time, that effort should be utilized for something more better. Thank you so much.

>> Mayor Reed: Kabeti Kaba, Chuck Carbuni.

>> Thank you, mayor Chuck Reed and councilmembers. I will thank you or behalf of the San José taxi driver association for the efforts and the works that you have rendered for us. And we know that we took your time, we assumed your times for a long time. Our issue has been back and forth for the last six months. And we appreciate, for the drafts and the signings of the memorandum by you and other councilmembers, and also we appreciate the draft that was forwarded for the implementation of the issue. So we urge you or ask you not to go back again, other six admonition or so long, if the issue is about economics. Our issue is purely economic. We are not against any company, any taxi company. We are suffering now, the number of taxi are about 607 now as reported, and still, the companies are hiring and hiring, and the number is going up. Taking this opportunity I would like to thank the yellow cab company which is a big company, understanding the issues of the drivers, and all, and stopping hiring the drivers. But the other companies, who have not provide a single pickup a day for the drivers whom they have, they are asking to hire new drivers. I don't know what the logic they are asking for. So please, we urge you, please go ahead and give solution to our economic solution. Thank you.

>> Mayor Reed: Chuck Arbuni.

>> Good afternoon, mayor, good afternoon members of the councils and the staffs. My name is Chuck Carbuni. I'm a yellow cab checker cab driver and I'm a member of the driver association. I work both in the city and the airport. As, you know, somebody he can feel heat when the fire is on his leg or his body, he can feel the heat. I can see some of the small company owners right now saying we need more study and more time. It is their interest to put more driver, when your stock depend how many drivers you get, you don't care in your house who is starving. The problem is not, we have the less drivers in this city. We have over -- almost 607, when I start 14 years ago, there was only 112 drivers. For the last three years, it added up almost 250 drivers. The city when it was booming, the cab company and everything, it would canal 400 at that time. Now when everything go down and the mayor and the staff of D.O.T, everybody knows how's our airport doing, our hotels, some of our business colleagues, they are thinking, the business -- the personal interest only to look at it and get more drivers. With the driver association board member I'm thankful for yellow cab company for stopping four, five months ago to hire not new driver. They did that. They use whatever drivers in the area for availability. But some of my small owners, they don't even have one call come into their dispatch every day. Instead of working with us and give them incentives we can come to them they try to create more hardship to us.

>> Mayor Reed: Sorry your time is up. Youssef Ahmed. Sorry your next then youssef.

>> We have been frustrated because we have been asking city council last five years. And our requested is just the economical. We're not opposing and we're not like or dislike for nobody. It is economical, when we ask for this memo to city council and mayors, was 545 drivers. Six months ago. Now it's 600 something drivers, it is getting hurt to us, we not making no money. We not making no living at all. Our opponents say,ists something against them, it's not anything against them. It's temporary halt, since it's economic at this time it is so bad and what we are asking is requested of mayor and city council members please move forward this agenda to the full councilmembers. Because we are frustrating, we been waiting for long time, and company is still hiring and hiring. When we asking it was 500 now it's 600, just keep adding. Just keep adding. Please move forward to full councilmembers as soon as possible, thank you.

>> Mayor Reed: Youssef Ahmed.

>> Councilmembers, mayor and city council, I'm the yellow cab driver. Three years ago, economy is good. Now economy is slow. Driver, a lot of driver is to my driver, and we are not making just going outside to going outside, we don't make just going home. We have family support family, then a lot of driver went outside, a lot of driver, the city have limited, the city make limited driver that I'm supporting to do that. Thank you. Deconan, can't read the handwriting of the last name.

>> Hi, good afternoon, Mr. Mayor and members of the city council. I'm talking representing national and the express cab.

>> Mayor Reed: Just get a little bit closer. There you go.

>> Okay. To me, and the small companies, we are not against limits. We are not -- we know, small companies, even all the companies cannot live without driver. The drivers cannot live -- cannot stay without cab companies. Now, you know, what we are saying is, if you decide this time, it makes more difficult, you know, to the city to give service to the cab companies. All the 605 drivers or seven drivers are with one company because of the airport problem. Every driver, I train more than 30 drivers since I open my company, national, 2004. These drivers, I remain with 7, 8 drivers right now. Every driver I train, they go to yellow, that's it. Because they don't have the chance to work at the airport if they drive with me. The reason, now we are asking the city to be fair. To be fair. If the airport is open to everyone, you can make the drivers limit within a day. We don't care. Because we know. Of course I am charging \$225 a week. Somebody, he is charging \$540 a week. \$540 a week, the drivers they are asking, of course, I'm not against the drivers. Most of them I drive them, I train them. So now what we are saying is, give us more time to study. Give us more time to study. You know, be fair. That's what we are asking. Thank you mayor.

>> Mayor Reed: Sherry Singh.

>> Good afternoon, mayor and honorable City Council.

>> Mayor Reed: Can you lift the microphone up just a little bit.

>> Councilmember Pyle: Squeeze the handle.

>> Mayor Reed: Just pick it up. Out of the cradle. It will be fine.

>> Thank you. We need some more time to because we're not considered, there are no solutions still for the concerns. It's not only for the company owners. My drivers have their concerns too. Taxi drivers association guys are here but most of the taxi drivers association are the drivers that have 195 permits at airport. But there are another almost 350 drivers, those guys work outside and they have their own concerns. So I don't think we can go to full city council with this agenda at this moment. We need to go back to T&E meeting and discuss our concerns and find some solutions for that. My drivers are ready, 195 drivers, they have airport permits, they can go airport right away but what about other 350, 400 drivers? They have served the city for a long time, they have their concerns. So give us some more time, we probably will make some solutions but but we need more time. .

>> Mayor Reed: I'm not sure I can read the handwriting. Valuchi.

>> Thank you, mayor, thank you, councilmembers.

>> Mayor Reed: You have to pick it up. Just pick it out of the cradle. Thank you.

>> Thank you. My name is Kulech, I am driver, member of driver association. My concern is, we are not asking, we are not coming with problems of to hurt small taxi companies, and making increase in big companies. We are asking to co-educate, to assemble, just as I heard from the straight with the California permit C, that is not only that, town cars in the limo scenes are working without us, without help from us, they have their own jobs. Very, very, this all hurts us. we are asking this committee, you, Mr. Mayor, to we are not coming to hurt anybody, we are coming to survival thank you.

>> Mayor Reed: Thank you, that's the last card I have except for councilmember Rose Herrera has joined us.

>> Councilmember Herrera: I'll stand.

>> Mayor Reed: Your choice.

>> Councilmember Herrera: Thank you member, my first time in front of the Rules committee. I come here as a councilmember and part of the T&E committee. And at our last meeting we didn't have a quorum and we weren't able to hear this issue or make a decision on it, and I'm very concerned about following the process and the process is what I'm concerned about. At the end of that meeting after we hear all of the presentations we may well decide to go forward with, you know, what looks like is moving forward today. But I want the opportunity for that committee to hear it. I think it's really important. I've had e-mail from people from my district. I'm also very concerned about impacts to small businesses, that's always a concern of mine and I just really feel concerned that we not bypass that process and have it come back to T&E. I would respectfully request that Rules send it back to T&E, we fully hear it and we not bypass that process. Thank you.

>> Mayor Reed: That concludes the public testimony on this item, Councilmember Constant.

>> Councilmember Constant: Thank you mayor. I agree with Rose, I think that should go back to T&E committee. It's obvious to me not only from what we've heard today, but in the communications I've had in my council office via e-mail and personal phone calls and such that this is an issue that the taxi community has no consensus on and they haven't worked through the issues. As you know, I've expressed before I'm not a big fan of moratoria, in 99% of the situations. And I think that in addition to circumventing our committee process, you know, the regular economic process of supply and demand, I don't think we can affect here. We've heard one comment here that, about bandit drivers, those drivers without permits. But I tell you a lot of communication I've had in my office that I've received have been specifically about those bandit drivers. The ones that choose to go around our existing regulations and most likely won't comply with any moratorium anyway. In fact, one cab company other than was actually heard making a statement to that effect, that it's just cheaper to take the risk, and if they get a \$250 citation, it's just a cost of doing business, to get around the moratorium. I don't think that we really should be doing this at this time. The -- I know there's even some question on the number of permits that are out there. My has gotten a few different answers of what that permit numbers are varying by almost a hundred which is significant. And I think the impact to the small taxi companies by this moratorium is going to be significant. And I think we are going to do -- we potentially could be doing more harm than good. And without going through the full vetting process of the T&E committee and really have stakeholders have an opportunity to discuss this in great detail, we have that risk in front of us. And I know if it does come to council I can't really support it going through until we know that we've exhausted all the research on it.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: I'm wondering what the timing on that would be. I want to give an example. Economic development couldn't meet at its regularly scheduled time either on the 23rd. And so we have rescheduled on the 30th. That worked out great. I don't know if, between now and December 8th, if T&E could meet, then we could accept the proposal made by Mayor Reed and Councilmember Liccardo, and have the T&E meeting as well. I have no idea what the plans are for the next T&E meeting.

>> Ed Shikada: Mayor, members of the committee, I believe the next meeting for T&E is on the 7th of December. So the typical turn around, I think one logistical question would be, what would need to be to get on to the agenda and the turn around would be after the first of the year coming back to the full council.

>> Councilmember Pyle: So is that acceptable?

>> Mayor Reed: Let me talk about why I suggest recommended with the memo with Councilmember Liccardo that December 8th after the T&E committee hearing didn't resolve the issue, I've been working on taxi issues ever since I was a first-year councilmember. And they've been in front of the city council many times on many different issues. There is no consensus in the taxi drivers, owners, individual drivers, with permits, without permits, there's no consensus. And there will -- I don't believe will be consensus on this issue, or any others. And having another T&E committee will be a repeat of the discussion you've heard today. Some are in favor, some are against. And that's the way it has been. And every issue that we've had, ultimately gets divided, the community is divided. And so I'm not surprised that there's not consensus. This is not something that you're going to arrive at consensus on by having another T&E committee meeting. So that's 80 thought it was -- might as well get it on the council agenda and have the

council make the decision on December 8th. Because we started working on this back in May, I believe and there are not only the 11 or so cab companies that have been represented here today, but each of the 195 drivers with individual permits for the airport is a small business owner and each of the other drivers typically is an independent business person, even though they may be working with a cab company. So there's all kinds of small businesses involved here and there is no clear way. Pretty convinced of that and that's why I thought it ought to be you pushed forward onto the council agenda.

>> Councilmember Pyle: So that point, it is 20 days from now, between now and that council meeting. Is there no way that the group can come up with some proposal exclusive of T&E that would work? That could be brought forward on the -- at the meeting date on December 8th.

>> Mayor Reed: I'm not real optimistic on about that. Maybe I'll let Jim Ortbal talk about the group of drivers, owners, businesses, small and large. And the process that we try to go through to arrive at a solution to a problem.

>> Mayor Reed, members of the committee, Jim Ortbal, assistant director of transportation. At the previous Rules Committee meeting October, when the Rules Committee took action, they directed we do some outreach on this process. I held a stakeholder meeting of the taxicab industry I believe it was November 10th. We had probably about 30 members of the industry there, we had drivers, we had company owners both small and large. And what you've heard today we've heard in that meeting. There is a wide variety of perspectives and opinions on what would be the best way to deal with the current economic conditions. I think I wrote concur with Mayor Reed's point, that working with the taxicab industry over the past 15 years, I don't think this is something you'll get consensus on. We have talked to the industry half a dozen times on the issue of caps, moratoria, on vehicles and drivers and it's a very difficult issue to arrive at any consensus within the industry. And we believe you'd have potentially marginal impact on the market itself. I think what the mayor and Councilmember Liccardo have proposed is probably the least intrusive way of trying to manage supply given the current circumstances.

>> Councilmember Pyle: Well, if I could continue, I would like to say I think this is a very thoughtful proposal that's been put together by Mayor Reed and Councilmember Liccardo. And I'm not sure who could lead the next meeting between then and now. Even if it did go to T&E, the whole meeting won't be strictly dedicated to solve this problem. We know what the problems are, it is a case of finding solutions and taking the time to do so. I don't know if Julia Miller would propose a time for all of you to get together so you could come up with something that could take the place of the T&E meeting. Otherwise, the whole thing is going to be delayed until January. There is the holidays and everyone would like to get a solution prior to this time.

>> Mayor Reed: Vice Mayor Chirco, let's not go there yet. Let's get done with the committee here.

>> Councilmember Chirco: I haven't been on the council as long as the mayor but I have been to a couple of taxicab discussions. I have to agree with the mayor. I think there's just too diverse a community to come to a consensus. I think probably the best strategy is to look at the data, take it to council, look at the data and have that discussion. I think our Department of Transportation and the airport have done a good job trying to work with the community. I don't see how taking it back to T&E would come to a consensus position. I think it would be right back at Rules putting it on an agenda with the same situation we have right now. I don't know that I disagree with Councilmember Constant. I think we, you know, if we put a moratorium, I think you are creating barriers. But I think that an item needs to be thoroughly discussed by council, and a decision made, so that there will be certainty, at least at the policy level, on what direction the council wants to go. So what I would like to do is, approve the memo that the mayor and Councilmember Liccardo have presented and let's move this discussion to the council, which is where the decision has to be made. I'm not optimistic about a consensus being reached.

>> Councilmember Pyle: Second.

>> Mayor Reed: Okay, we have a motion to move it ahead to the council on December 8th as requested. And I think it comes down to a yes or no vote at the council. Either you want a moratorium or you don't. Either it does or it doesn't. And as you notice there's not a lot of discussion about the details of the moratorium. It's really about yes or no, should we or should we not do that depending upon everybody's point of view. It either hurts them or helps them and pretty much determines their position. Councilmember Constant you had some other comments on it.

>> Councilmember Constant: Well, whether we achieve consensus or not may be one question or not. I think there are a lot of questions that could be answered in a T&E committee meeting. Like how are we going to deal with the bandit drivers. I understand that we haven't been doing much at all. And that the police department doesn't have really any resources that can be committed to it. And how we would deal

with that, if that's increased, we still have a lot of questions on how that we've heard here today on how it's going to affect the smaller businesses, that I don't think have had a chance to be answered. While I agree with you, that perhaps it's going to come down to a yes or no on the moratorium, there are a lot of factors in this memo that really, I haven't seen anything from staff that either supports or not on these issues. And I don't think we've had at least on this policy discussion, much input from staff officially on it but I think whatever the will of the committee is.

>> Mayor Reed: Well, I don't take lightly putting something on the council agenda as you know, especially on a busy December agenda because we have a lot of other things to do. But I don't think there's any other way to get this resolved than have the council make the decision. And that's why I'll support putting it on there even though we have many, many other things to talk about. But anybody who has other suggestions about how to do this between now and December 8th, put them in writing. Give them to us. I will say that the memorandum that Councilmember Liccardo and I have put out have been through a lot of discussion with a lot of different people in the industry, and in the staff. And I think the process we've identified here will work, and it will be a good one. I'm not committed to exactly this way, I'm open to that and I think if people want to get together, figure out some sort of a different process or come to a consensus, all that could happen. I just don't hold out a lot of hope that it will, based on all of my previous experience in trying to resolve these issues with 600 people, plus a dozen companies or so all having slightly different opinions from time to time. So with that, I would I think call the question here. Motion is to move it ahead to the December 8th agenda. All in favor? Opposed, one opposed, Councilmember Constant. So that item is approved. Be on the council agenda December 8th. Now, we go back to Public Safety, finance and strategic support committee agenda. We have two requests to add to that, one is the audit of the Hayes mansion and the other is the audit of the convention center and cultural facilities. For reports from the auditor, this is work that's already been done, this is part of the reporting out process.

>> Councilmember Constant: As the vice chair of the committee I'll make a motion to put more work, both of these onto our plan.

>> Councilmember Chirco: And I will gladly second that.

>> Mayor Reed: Those are both for December 17th. Motion is to approve, all in favor, opposed, none opposed, have more work, folks.

>> Councilmember Constant: We love work.

>> Mayor Reed: Yes, I know you love the work. This takes us down to open government initiatives, significant public records act requests. The clarification requested by the administration for certain police records photos to be posted on the city's Website regarding the Daniel Pham matter, the city has released audio tapes and reports. There are probably a thousand photographs to be considered that they are a part of the record, part of the reports. We did not specifically discuss them. At the last committee meeting when we were discussing what to release. So I know the administration thought they ought to come back and get some clarification on that because of the nature of the photographs which they've described in their memo. So I think it's appropriate for us to have that conversation before we start posting things on the Web. So with that I'll turn it over to City Manager. Deanna Santana.

>> Thank you, mayor. You covered most of what I was going to say. What I will do is update the committee on hearing from the Pham family attorney, one of them. November 16th we heard from Mr. Caputo who spoke to the police department specifically related to autopsy photos. He expressed on behalf of the family that in order to preserve the family's dignity and concerns for privacy that they are had requested that photos regarding the autopsy that depicted from Daniel Pham's face not be released. However, if that request could not be made that all photos related to the police records be released. And so, I have tried as of even today to get in contact with the attorney to seek additional information. The police department has had ongoing communication over the past two weeks to seek clarification. Because the photos fall into a couple of categories, and I would ask the police department to correct me if I'm wrong, but there's the scene of the incident which depicts the photographic representation of the incident that occurred at the location. There's medical photos that took place at the hospital at the time of treatment of one of the victims and then there's the autopsy and morgue photos. And so what we have is input over the last week that expresses from the family the need to maintain dignity, privacy. We have input from a reporting party who was not at the scene of the investigation for anonymity that those specifically not be released, that included in the staff memo we have also put additional parameters should the Rules Committee decide to release photos. And so we wanted to bring forward what the options were available to the Rules Committee should it decide to

release reports. I can go into that additional comment if you'd like or I can stop there and take questions and -- want me to keep going?

>> Mayor Reed: We have a couple of questions, at least I do. First was, did we receive anything in writing from the family, Pham family?

>> We did, we received an e-mail on November 16th.

>> Mayor Reed: Okay. And that's what you just described, is that request?

>> That is what I described is if we can not pull out the pictures of his face then to release all photos.

>> Mayor Reed: The second thing is, it's not clear to me that we still have a public records act request pending, because of the release of all the reports and the 911 tapes which is what people were -- I thought were asking for. And we didn't even discuss the photographs at the last Rules Committee meeting. So I'm just wondering, is there anybody here who wants to speak in favor of releasing these photographs?

>> Just for clarification we do have a pending public records act request for multiple CBOs including ACLU debug and what we told them at the time of our response is that we would be forwarding the request to release the photos to the Rules Committee and that the Rules Committee would determine our response.

>> Mayor Reed: All right, what about the Mercury News?

>> No.

>> Mayor Reed: They are not applicable?

>> City Attorney Doyle: They have not asked for that, their request was not as broad and technically their we are addressing the issue of the CBOs that have asked for more information.

>> Mayor Reed --

>> Mayor Reed: Not just yet.

>> On the 911 could I talk what you just said that we're not allowed --

>> Mayor Reed: I'm not ready for public testimony. He we'll get to had a, just not at this moment. So we do have a request and this is part of how we respond to that request on the photographs.

>> Right.

>> Mayor Reed: Okay, chief Katz, did you have some documents add?

>> Well just a few and some of the photos. If the committee were to release those photos, you know the ones that staff and the PD recommend not be released, those are the autopsy or morgue photos, they're very graphic. I viewed them myself and I would find I think for the general public they'd be very disturbing and they violate I think the privacy of the family. The reporting party in this case, there are photographs that depict the exterior and interior of the home. They request anonymity in this case and I request that be honored. It would be a chilling effect for people to come forward and assist a neighbor call for help and have the inside of your home exposed needlessly. There are interior photographs that expose the interior of the Pham home, I don't think they're material, the officers, one thing that need to be considered there is still an administrative investigation that is in process. I think an argument could be made that the government code alludes to the fact that officers' pictures without consent should not be released and put on the Internet. You know these officers gave consent as we normally do in our process to have their photographs taken as part of the investigation. They also consent to be interviewed and we have a very, very good officer-involved shooting protocol. We're not in some parts of this state where officers refuse to make statements and then have to be administratively excused to do so, and I have concerns about that. I also don't want to -- the officers would have legitimate concerns about their picture being displayed and possibly face harassment or targeting. And also photographs that contain identifying information such as license plate and addresses that are taken in the neighborhood of other neighbors' cars and such like that I think would be things that those folks would want withheld.

>> Mayor Reed: Well, I think this discussion illustrates why I had some concern with the concept of all police records would be released subject to exceptions, which is where we started our discussion a long time ago. Because we didn't even think about these kinds of issues. And all is a very broad, broad topic. I had a couple of things. First is, I'm concerned about electronic distribution, whether or not things get posted on the Web. Whatever we might decide to release, we need to release in a fashion that doesn't necessarily -- we don't post them on the Web. Because I know where they're likely to go, and how they're likely to be used. Anybody that wants to ask use them any way they wish. I know one of the recommendations was, if we release anything, that it be done, make them available for viewing, and make the copies available for hard copy. If someone wants to scan them, that is their concern, not ours. Because I am concerned that some of these photographs are clearly graphic and disturbing and

there's reasons why maybe this should be released but there's also reasons why we don't necessarily have to post them on the Web. I'm interested in making sure that we protect the victims, the witnesses, and the officers. There's lots of things that you've outlined, reasons why those are important. While I don't really have a full understanding is, what's left. Of all the things you've outlined in your memo of the things we should not release, what's left in the pile of photos, is it 500 that are left, 5 that are left? I don't really have a feel for the magnitude of it and how difficult it might be to handle those or what might even be in there. You know, what, if you were to take that list of a thousand say, okay, we should release these, what would these be? And I don't have a clear idea what would actually might be released if we said okay, take out everything you said not to release and then release the rest. What's in that?

>> I don't have a numerical count for you but you are talking over a thousand photos. So I think what could potentially be left would be obviously the exterior crime scene, the photos of the crime scene, the photos of the weapon, you know, all the different photos depicting where evidence was located around the residence. Photos of the victim brother, what that tabulates out to I couldn't tell you, mayor. But like I said, there are a thousand photos. I would have to assume there are quite a few.

>> Mayor Reed: Are there questions, comments? Pete.

>> Councilmember Constant: First, a question from the table that's on page 4 of the memo. I guess this would be for the City Attorney. On option number 3, if the committee were to choose that, with select photographs that were available for viewing, in the policy considerations, the second bullet, I just wanted to clarify, once we show someone the pictures, is it the attorney's opinion that then they can get a copy or is there a way that things could be viewed, without us necessarily agreeing that they're a public record, saying we're showing them to you, we're not saying it's a public record, but we're making a limited number available for XYZ purpose?

>> City Attorney Doyle: The public records act contemplates if you make documents available the requestor has a chance to review, if they say they want a copy you need to comply. If you deem it to be a public record disclosable, they have a right to a copy. We're turning out new ground here because typically we don't turn this stuff over but that is sort of the general rule. I'd like to answer, in following up, I'd ask my staff, it was the Debug request that was brought. They wanted everything in the file. In turning over the documents and making documents, providing them last week no one has come forward and said they want more. So the committee should know that at this point. This is something that because the committee directed the department to turn over the file this is an issue that we had as a staff but that no one that we know have has made a request for more than what was turned over last week.

>> Mayor Reed: Okay, if I could interrupt the flow of questions, Vice Mayor Chirco has got to leave at 4:00, I want her to have a chance to ask questions and then we'll come back to Councilmember Constant.

>> City Attorney Doyle: That's fine.

>> Councilmember Chirco: To the City Attorney, there has not been a follow-up once there was a release. Is there a legitimate request for the public documents, you know, relating to the photographs?

>> City Attorney Doyle: I think my point is that we're not aware that people aren't satisfied with what's been turned over. As far as we know if silence is consent which under the law it is, then you just sort of deem that no one asking for more is -- they're satisfied with what they got. That being said the only reason we've come back is the committee did give us the -- say, issue to get the whole file and we wanted clarification. If there's more to be released, those photographs are in issue and what, if any, should be released.

>> Councilmember Chirco: Because I'm concerned about what I heard captain Katz talking --

>> Mayor Reed: Chief Katz.

>> Councilmember Chirco: Pardon me, I just demoted you.

>> That's okay.

>> Councilmember Chirco: Chief Katz, talking about anybody that wishes privacy, and then even the ones that you know, you removed the officers and any identifying addresses or license plates. That the police department consider that this might be part of the releasable, that the Pham family look at, and agree to release, because, you know, to say release everything when you've not seen it I think is really asking. So I'm not comfortable releasing the really -- you used a word for it --

>> City Attorney Doyle: Graphic?

>> Councilmember Chirco: Yeah, okay, the really graphic, I see no real purpose served. It's in the writeup, it's in what happens, and pictures of the crime scene, maybe pictures of the weapons. But the graphic, I don't think does anything but create chaos and frankly almost like voyeuristic viewing, which I

think is immoral to the tragedy that happened. I don't want to -- I have to go. Because I have people coming.

>> Mayor Reed: Thank you. I have a couple of requests to speak but I'll come back to Councilmember Constant first.

>> Councilmember Constant: Well, first, the only photos that I would support, releasing at this point, if we even need to have that discussion, are photos that depict what the officers were confronted with at the time of their arrival. I think the morgue photos, the autopsy photos, all that other stuff, I think the thing that's really only germane to the public conversation is, what the officers faced, and whether they were justified in their actions. But I think based on the fact that there is no current request, I'd like to make a motion that we just drop this issue, unless it comes back to us. I don't think we should establish a precedence unless we feel we need to. That's a motion, actually.

>> Mayor Reed: If we were to respond to the existing request with the staff memo, they could renew their request and we could take it up again.

>> City Attorney Doyle: I believe we've posted it and we've alerted people that this was coming back to rules.

>> We have, this was part of release of documents on Friday.

>> Mayor Reed: But we could certainly not take action pending finding out whether people really really wants us to take action, by pursuing it, convincing us of what should be released. We could do that. If we decide something it is not with prejudice. They could ask again. Although just thinking about the administrative appeals, and exhaustion of remedies, and the administrative way to get records. We don't want to force someone to file a lawsuit to get records.

>> City Attorney Doyle: I think at the end of the day, if somebody decided to push it, it would come back to this committee.

>> Mayor Reed: That's a possibility. Rather than drop it, Pete, we table it?

>> Councilmember Constant: That's fine.

>> Mayor Reed: That way, that would be one thing to do.

>> Councilmember Pyle: I could second.

>> Mayor Reed: There's a second for that. Any other questions? Public testimony on this, George Beatty and then I assume at least somebody else will speak.

>> Mayor Reed, members of the council, committee members, George Beatty, vice president of San José Police Officers Association. I think Chief Katz put it pretty eloquently and described many of the reasons why this would be -- release of certain photographs would not be a good idea. And one of the main things that chief Katz mentioned is currently, right now, our offices willingly cooperate with investigators. We voluntarily give statements, we voluntarily allow ourselves to be photographed. And I can assure you unfortunately that there will be incidents like this again in the future because, that's the world we live in. However, when our POA director shows up at one of these scenes okay and one of our members ask us, do I have to give a voluntary statement, do I have to be photographed voluntarily, I'm going to have to tell them no you do not, you have a constitutional right to say no. In that mind, the photographs are going to have to be excelled. The officers are going to forcibly be, losing their jobs once that happens, then it becomes an internal investigation and you'll not be able to avoid the police officers bill of rights act as in this case it's part of a criminal investigation which is allowing you to do it. That is the main reason. I think in everybody's zest for zeal for sunshine, in actuality, you're going to back the offices into the corner and we're going to be forced into not complying and I think the wrong message is being sent. Other things to consider, I can tell you based on life disappearance, that the release of these photos, where they're going to go for whatever reasons that people have that they want them, it is not going to end up good for our offices, it is going to be posted on the web, there in perpetuity and not in a positive way. That's going to affect, the officers are human beings, their families are going to see this stuff, they have spouses, children, you may have a person who may have an ax to grind with the police and there's the photograph. You're really jeopardizing their safety in the long run. The other thing is too once this is out in cyberspace, it impacts their ability to work undercover. Many officers get undercover assignments and you're going to jeopardize their ability to do that. Lastly, if you have crime scenes or witnesses and et cetera it is my opinion that the community is not going to be as open in cooperating with us. They don't want to see their pictures up there either and it is for the same reason I mentioned for the release of information. It can get into the wrong hands and when that happens, bad things happen to people. And that's unfortunate but it's true. I would really like for you to consider not releasing the photographs of the

officers for the reasons I've mentioned and the reasons chief Katz has eloquently stated. Thank you for your time.

>> Mayor Reed: Thank you. I'm favoring tabling this and I'd like for the staff to communicate to the people who started this that let them have the staff memo. Because see what they want to say. I would not support releasing any of the categories of photographs that the department has identified should not be released. I want to protect the victims, the officers, if there's a specific photo that is relevant to the public debate and the public interest on this I think we could consider that and evaluate it. But it's pretty hard to evaluate a thousand photographs and decide in the abstract whether or not the public interest in having the photograph out there outweighs the public interest in protecting the privacy or whatever it might be. So if somebody wanted a photograph of the knife, I would feel differently than if they wanted a photograph of the officer. And because the request is so broad, all, I just don't think we ought to respond to it today. And we'll see if they really want something, maybe they could narrow it down because we do that often, a public records act request, which is what do you really want, and we figure out a way to do that. I think I'll support the motion but I don't want people to think that we're considering releasing photographs of officers or witnesses or victims or the insides of their houses. I'm certainly not willing to do that, and I don't think anybody else on the committee is, either.

>> Lee Price: Mr. Mayor, if I could, I'm absolutely certain this is a discussion we can have based on what's on the agenda. But my office as you know is hosting the information on our Website which is very different from the typical kinds of information that we host. And I just wondered if the committee wanted to give some direction about how long this information should be up on our Website. And if at some point in time the information can come down. And we have another example of when Norcal investigation, our office hosted all of that information, many, many documents, just like in this particular case. And we did that for a 30- or 60-day window but then we did pull it down after that agreed-upon time. I don't know if the committee wanted to give us some direction about that today or if we could perhaps come back at another time.

>> Mayor Reed: Why don't you come back under one of our open government initiatives in the future because there's some period of time, which everybody who wants it can have access to it. Even if we take it down it's still a public record, somebody could come in and ask for it some other way. Anything else on this?

>> Councilmember Pyle: I just wanted to agree, we have a responsibility to protect our workforce, not to do that I think would be against all of our wishes so I'm totally in favor of proposing to ignore -- not ignore, but to exclude these items that are presented.

>> City Manager Figone: So Mr. Mayor, I'm going to look to Deanna. I think what we'll do is put an affirmative statement on the Website which will clarify the position on the committee off photographic records at this point in time, that this captures the sentiment and the direction of the committee today.

>> Mayor Reed: Okay. Chief, anything else on that?

>> No, thank you, mayor.

>> Mayor Reed: I have one last question for the department and that is I know it takes a lot of time, effort and energy to do these kinds of records, releases, to the nearest hundred hours?

>> I'd have to ask captain Hober, he was tabulating that number for us.

>> At least (inaudible).

>> Mayor Reed: At least 350 hours, and counting. So you are all here today.

>> That's not counting now.

>> Mayor Reed: Straightforward, does that include the City Attorney or --

>> City Attorney Doyle: Or the City Manager's office.

>> Mayor Reed: 350 police hours plus the clerk, City Manager's office, city attorney's office and our time doesn't count. We won't tabulate our time, just the staff time, it's a lot and that's consistent with our previous experience. If we do it, it has to be done right, it has to be done within legal limits, but Mr. Trout, do you want to speak on this one?

>> Separate from the open forum?

>> Mayor Reed: On this topic or?

>> Yes, I really would.

>> Mayor Reed: You got to speak on this topic.

>> You Mayor Reed, you made motions on voices on 911, remember when you said that, voices on 911, people called in on 911, the crime scene on 911, does pertain because you mentioned it. We have information, okay, that 9/11 --

>> Mayor Reed: Mr. Trout, we are talking about the release of these photographs. If you want to speak about that, wait until the open forum, and you can talk on 9/11.

>> I'm connecting the dots.

>> Mayor Reed: No you're not. I'm going to rule you out of order. Just wait a few minutes. Anything else on this item? We have a motion to table it, all in favor, opposed, none opposed, that's what we will do. That does bring us to open forum, is that right? Okay Mr. trout, that's the time. You have two minutes.

>> I noticed you have a support our troops emblem on your shirt there, mayor and your daughter is on active duty. You know, the best way we can support our troops is to bring them back home. We have information that Dick Cheney knew about it. There were three elements of the crime scene of 9/11. There were Moslem terrorists, Larry silverstein owned the towers, he got \$9 million as a result of the towers being down, there were five Jewish fellows prior there, to film it, their words, to film it. We have elements of the government, Jewish elements and Muslim elements. I'm calling you as a player, to get something going, six of the ten guys on the 9/11 report said it was BS, okay? That's what they said, you know? It's really sad that we've got one guy, Craig Roberts on KFOX 1100 that interviewed some good people about the speed of the drop of the buildings. We have got Stanley Monteith on KKMC, but nobody nationally will talk about it. Rush Limbaugh, Sean Hannity, Sarah Palin even, will not talk about the facts of the crime scene on 9/11, that these buildings dropped at freefall speed. Now, freefall speed is an established speed by science. See my keys fall? It fell at freefall speed because the columns were blown out. That guy from Italy said it was the American CIA that did it, wouldn't surprise me, okay? But this much I know: You're rolling your eyes. Listen, the fact of the matter is, Jason Bermus has an Internet film called Fabled Enemies. Our former mayor, Mineta, was there when a guy walked in, told Dick Cheney the plane's ten miles out, do the orders still stand? Dick Cheney said, of course they still stand. That was Cheney said. They were on a Republican, man. I ran for office, but you know what, I don't care whether you're --

>> Mayor Reed: Your time is up, two minutes. Mr. Wall.

>> My time is up. Let's go live in dreamland.

>> David Wall: First I'd like to thank all of you for your efforts yesterday. It was a very tiresome meeting.

>> Mayor Reed: Tilt that up just a little bit. Especially if you are going to thank us for something, I want to make sure it gets picked up.

>> David Wall: There. I'm also going to give you a solution that arose from those proceedings. PBCE is a unique function. It has a variety of different subfunctions within that group. Specifically, I want to look at the building inspectors, are one of your higher, most valuable people not to lose. But they could also become a hybrid in the sense that they could be code enforcement inspectors, as well. The call center could focus, since you have that utility, to call in within a specific time period, calls for service as far as permits or code enforcement complaints, routed by districts. The building inspectors could issue electronically building permits on the site, where the permit collection fee would be run by utility billing. These are just rough ideas. But I believe you would raise a lot of money, and keep your building inspectors, because the back end of building inspectors is the home restoration business. And there's a lot of money there. And people with money to restore their houses are not going to take kindly to wait. Now, what this draws into, as well, is I don't like any public official ever being threatened. Today, I saw both of you folks threatened by the taxi folks, seen the City Manager threatened by other groups. And the bandit people from the issue you raised. These threats to subvert the law versus going through the permitting process, should not be tolerated. But the actual ideas that I have about this, I'm just going to write them down and give them to you.

>> Mayor Reed: That would be good because your time is up. You can submit them in writing and the clerk will get them to us. That concludes the open forum. We're adjourned.