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>> Mayor Reed: Good afternoon. I'd like to call the San José city council meeting to order for August 11, 2009. We will start the meeting with the invocation. Councilmember Nguyen will do the introduction.

>> Councilmember Nguyen: Thank you, Mayor, good afternoon. I would like to welcome Pastor Arno Perez from Cry Out Christian Fellowship to lead us in the invocation today. I had the pleasure of working with Pastor Arno and his church on several community events within the last couple of months. His church organized the litter and speedy cleanup in the Seven Trees area, bringing in over 100 people to clean up the district. He also hosted the National Night Out last Tuesday where over 300 people from neighborhoods came out to pledge their support against crime. Through his leadership the church has grown to be a source of spiritualism as well as a place for community activism and unity. Please welcome Pastor Arno to help us deliver the invocation.

>> Thank you, Madison. Heavenly father, I thank you for this day and for your goodness and your grace, and I thank you and am encouraged that your word says for us to pray for your leaders. So Lord, I pray that you would bless our mayor as he leads our city, give him strength and wisdom, guide him, protect him, lead him as he leads us, surround him with people who will encourage his leadership, and give him the wisdom to know when to work and when to rest. I pray for every city council member represented here today that you would bless them and guide them as they continue to work together for the good of the people and for the safety of our communities. I pray for our city, lord, that your hand of grace might be on us. I pray for every home, every marriage, every child, every single parent, the elderly and disabled, for our schools, churches, businesses and communities, and in the name of Jesus Christ, we stand and fight against hate, crime, violence, drugs, and prejudice. And help us, O God, even in our differences, to stand together in unity for a better city and a brighter future. I pray for this all and thank you in advance, Lord, in the name of Jesus Christ, amen.

>> Mayor Reed: Thank you. And I thank Pastor Arno for being the headquarters for a beautiful day event where 13, 14 churches came together to put together hundreds of volunteers to help do some cleanup work in our neighborhoods. We really appreciate that. Okay, now, please stand for the pledge of allegiance. [Pledge of Allegiance]

>> Mayor Reed: First item is orders of the day. I have one change to the agenda. Item 2.7 needs to be deferred for one week. Anything else under orders of the day? We will adjourn today's meeting in memory of Jesse Dominguez, a lifelong San José resident. Councilmember Herrera has some comments.

>> Councilmember Herrera: Thank you, mayor. Jesse Dominguez was a lifelong resident of San José. And I was privileged to know him for the last 30 years. He gave his heart and soul to helping youth in our community. He was killed in a tragic rail accident on July 22nd. Jesse rode our buses and light rail to get around. In recent years, an accident left him using a cane to walk. He spent his time, almost all of it, listening to young people and their families advocating for social justice. He was known for having a firm heart. He organized the first Chicano spiritual walk in 1979 and he worked for the Santa Clara County human rights commission. hundreds came to his memorial service, to honor jesse's contributions to the Chicano civil rights movement. I will always remember Jesse's social justice for his community. Our deepest condolences to his family and his friends, some of whom are here today, Naeche Dominguez, nephew and God son, and Ruben Lopez, a friend thank you.

>> Mayor Reed: Anything else under orders of the day? Is there a motion? Motion to approve orders of the day. All in favor? Opposed? None opposed, those are approved. Closed says report, City Attorney.

>> City Attorney Doyle: Mr. Mayor, members of the council, the council met in closed session this morning pursuant to notice. Appellate rufn city versus international Association of firefighters and the substance of litigation is we are seeking review of an arbitration award.

>> Mayor Reed: We'll next take up our ceremonial items. I'd like to invite Councilmember Liccardo and Herrera and members of the YMCA East valley adventure camp to join me aat the podium. Come on down! Let's get the whole group here. We got room. Come on around. Today we're presenting a commendation to the McKinley teen center and the YMCA east valley adventure camp to provide services to the five wounds Brookwood terrace area. After we get them all down here Councilmember Herrera will talk about some of the things that we're doing out there.

>> Councilmember Herrera: Thank you, mayor. So we have today teens from east valley YMCA. And we're also honoring, we will be I guess at some point in the future honoring the McKinley teen center, joined with a few other organizations the children's discovery museum and east side district at Yerba Buena, for 17 days of service, over \$118,000. they provided services at the following locations, Martin

park, forest hill tot lot, Olinder lot, 22nd street between William and 280, roosevelt park hacienda park, St. James park, Bequesta park, Coyote trail, Coyote and the creek between 280 and Santa Clara street, Reed street between Almaden avenue and Market Street, and, highway 280 and Julian Street. over two dumpsters were sorted and recycled, exact weight and volume not yet known, and to date over 120 bags of litter have been picked up and filled and gallons of paint to paint ore graffiti . This is an extraordinary effort. Michelle Leonard is going to be accepting on behalf of the east valley YMCA. We will be presenting the McKinley teen center's commendation at another time. So if we could have the mayor. [applause]

>> I just want to say thank you very much for this opportunity and I know the experiences our teens had over this summer will last them a lifetime. And I hope what you guys learned and what you guys did is something that you will continue to do as the school year comes and we appreciate the opportunity. So thank you.

>> Mayor Reed: Thank you all. [applause]

>> Mayor Reed: I'd like to invite Councilmember Campos and Gabrielle and Tiffany Maldonado to join me at the podium. Today we're commending HACE scholarship recipients.

>> Councilmember Campos: Today we're recognizing these three young people for their activism. To speak to you about these three young people, and their accomplishments that they have made in the City of San José, and then the mayor will present them with their commendation. So at this time, Theresa ramos.

>> Thank you, Councilmember Campos, hnl mayor, city council and the public. Today we have honor to introduce to you the 2009 Hispanic association of city employees scholarship recipients. I am proud today to talk to you about a brief history of Gabrielle Castro, graduated Summa Cum laude. serving the Latino community in the health remitted field at this time, Gabrielle is not here today to accept her award but we will be giving that to her, it will be a thousand dollar scholarship. Next we have eSteban, Servin who graduated magna cum laude. Esteban demonstrated exemplary commitment. Active member of the Branham symphonic band and the honors jazz ensemble in the marching band and the prep band . Esteban is a member of the national scholarship federation. He will be receiving his award thank you. Next we have Tiffany Maldonado. She plans to transfer to San Francisco State University in the fall to pursue a degree in behavioral and social sciences. Tiffany has worked two part time jobs while enrolled at San José City College. In her employment she was part time Mt. pleasant kinder through second classes and she is a city employee as a recreation leader. Because of the economic times, I know that she has been unemployed in one of her jobs, but we are very honored to have her receive this award. Her long term goal is to receive her degree in arts, therapy and Tiffany will accept her award. Thank you. [applause]

>> I just want to mention that all three recipients have demonstrated academic achievement and it's an honor to be able to serve not only HACE as a president but also the community. All three recipients are children of HACE members. With that, let's give them another round of applause. M next I'd like to invite Councilmember Kalra and representatives from the federated indough American organization. We are celebrating, this Saturday, Indian Independence Day. Councilmember Kalra has more information.

>> Councilmember Kalra: Thank you, mayor. Our forefathers started an experiment that has been a torch that shown around the world, what democracy is, what freedom is and self-determination. Throughout the decades and centuries, you see many examples of those that have followed in America's footsteps. And I'm certainly proud to say that my family came from India which is certainly one of the great examples of a democracy in our world. And has a close friendship with our country here in America. On August 15th, 1947, 62 years ago, this Saturday, will be -- that will be marking the anniversary of India's independence from Britain. And it's a very proud moment for many of us who have our family, a lot of family still back in India and who here, try our best to hold on to our cultural heritage as well. For those that don't know, India has approximately 1.2 billion people and earlier this year they had elections that were peaceful and 714 million eligible voters, there were 417 million people who voted. More people who voted in democratic elections in the history of the world, never been seen before. So we can certainly see the dmample the United States has goifn our friends in India is being followed. We have a great democracy here. I want to honor the Indians that are here, that contributed so much to this nation. Indian integration started about 100 years ago, men coming from Punjab, for agricultural, farm work, a lot of them settle in the valley. certainly with Martin Luthur King following Gandhi's example, we saw hen the change of immigration laws to come here freely and contribute to this nation and so here we are now we see so many great considerations that Indian Americans have made to this country and particularly to its valley, here we are in Silicon Valley and I think certainly amongst all of

our neighbors and friends and business owners and entrepreneurs we see a very strong contribution from Indian-American community and I'm very proud of that. And so I would like to at this time ask Mayor Reed to present -- before I mention that, I do have not just representatives of FIA but a couple of other folks here that are city employees who also, whose families hail from from India. at this time Mayor I ask if you could present this proclamation, honoring India's independence to Rajesh Vurma. He's also the festival coordinator and this weekend, not only on Friday evening celebrate having a flag raising here in the plaza, but the 17th anniversary of the festival of India which include celebrations both days and parade on Sunday.

>> Thank you, Ash. Honor and privilege to receive this proclamation from the City of San José. And Ash has covered most of it, you know. I just want you to know that India gained independence on August the 15th, 1947. And this day is celebrated by raising flag hoisting in all part of India, different buildings and in different locations. This is an historic event that Ash, councilmember Ash Kalra has well doubt that on 14th of August, 6:30 there wiebl flag hoisting right here on the city. Everyone is welcome. I'll add one more thing. On the fearnt and 16th of August we are celebrating two days of fists, everyone is invited and it will be a fun thing to do. Thank you. [applause]

>> Mayor Reed: Our next item is the consent calendar. Are there any items council wishes to pull off the consent calendar for discussion? [Technical problems] there was a drive by shooting near Kelly partnering and a 16-year-old man was wounded in the thigh. Park rangers responded and provided configuration aid. While responding officers got a description of the vehicle. Very quickly the vehicle was spotspeeding South on highway 101 officers followed and when the vehicle started to get off the freeway at the capitol expressway they were able to pin the vehicle and stop it. Elections to talk about the recommendations, I do have a couple of cards from the public to speak on this we'll get to that in a minute.

>> Yes, good afternoon mayor and council. Lisa Herrick. We have from the elections commission the vice chair Michael Smith here today and I want, I think we would agree that staff really appreciates all the time and effort that the commission put into coming up with these thoughtful recommendations. It was many meetings, and many hours. So I want to certainly thank them for that. The revisions that are proposed by the commission today fall into a couple of different categories. The first category relates to campaign finance and provisions we have in title 12 and other provisions relate to the legs commission, its composition and how it conducts its business. I want to note that one of the recommendation that we will recommend later, does recommend suspending the campaign contributions for independent committees. That would be lessening in a sense of our ethical standards as described in charter section 607, and so that, at least that provision would require a two-thirds vote. So the first category of changes, really, modify the definitions of a few terms to make our definitions consistent with the California political reform act. The current definition for committees in particular regulates only those committees influencing or attempting to influence the action of the voters in a municipal action for or against by limiting our definition of committee to only those committees that participate in candidate elections we're limiting technically what sorts of reporting obligations committees would have in San José. As a practical matter, the political reform act requires all committees, including those that relate to ballot measures, to file campaign disclosure statements in San José. So our own limitation really does no purpose, serves no purpose. And so this would simply just make it consistent with the political reform act. The revisions also clarify, because we've tbeekd the definition of committee, we want to make sure that when we are speaking of constitutional limitations, those refer to only mayor and councilmembers we constitutionally cannot regulate contributions to any ballot measure committees. And so any of the other revisions just make that clear. So this is the big issue that I mentioned. The proposed ordinance also would suspended the provisions that limit contributions to independent committees until one or two things happen. The first would be the ninth circuit is considering a similar ordinance in the city of long beach's ordinance. That code section limits contribution to independent committees as ours does. It's quite similar. And so we could get some guidance from the ninth circuit soon. And by soon, I mean maybe by the end of this year or early next year. And that guidance would be useful in knowing that we could enforce our own contribution limitation ordinance, lawfully with respect to independent committees. The proposal also suggests the sunset provision, the date of December 31st, 2010 was suggested, an earlier date could be imposed, as well. There's nothing necessarily magical to December 31st, 2010. I think it would be important if we are going to suspend the ordinance and bring it back at some point that we do so, so we have clear rules for candidates in the 2010 elections. I don't know that we would necessarily want to change the rules between the primary and the runoff, for example.

>> City Attorney Doyle: If I can chime in here. This provision is the subject of litigation that the compact against the City of San José and for that reason we are all watching the Long Beach case. For that reason, the cities of San Francisco, Ooms and Sacramento I believe have suspended. There are reasonable arguments on both sides but we're really waiting for more court guidance.

>> Lisa Herrick: The next thing the proposed revisions do is to really tighten up, I think, the City's disclosure requirements. Essentially, the sorts of campaign disclosure statements that candidates, control committees and independent cities file with the City Clerk. In some cases, the proposed revisions provide skinsy with the political reform act as I've explained a little bit. The current version of our ordinance may make it -- may or may not be clear, that independent committees have to file their campaign disclosure statements with the City Clerk, if they make expenditures or receive contributions in San José candidate elections or San José elections at all, since the political reform act requires that they do, this just makes it extra-clear. The proposed revision also would expand what the candidate and treasurer dedications would require. Right now, you may or may not recall that when you filed the campaign disclosure statements, there is a declaration that is a San José-specific form that requires that you state that you have not solicited or accepted any contributions in violation of the contribution limits. There are other requirements that title -- or rather chapter 12.06 provides, like campaign collection periods and other sorts of requirements that would essentially require adherence to all of 12.06. And then the independent committees that are not primary formed in San José would have two requirements, who additional requirements first of all, filing official for the previous 12 months so let me sort of explain that a little better. A committee that is not necessarily formed for the purpose of participating in San José elections may certainly receive correction and make expenditure in San José elections. Once they do so they've got to file a campaign statement with the City Clerk. But you don't know necessarily then what sort of activity that committee has had. Leading up to that one campaign disclosure statement. So what this would require is that independent committees who were filing campaign disclosure statements with their primary filing official whether that's the county registrar of voters or the Secretary of State, FEPC, those previously filed statements for the earlier 12 months would need to be filed within two business days with our City Clerk. We also then would know what was going on the -- following that initial activity in San José. Then, the committee would need to file statements going forward, until they either terminate or stop participating in San José elections for four years. So it really is a way of being able to follow the money, committees that are participating in San José elections, you'll know what sorts of contributions are being received, expenditures are being made, beforehand and then for some -- a good time after. The final campaign finance provision relates to electioneer and campaign contributions. This is a big change. What our current ordinance does, we do regulate campaign advertisements. What we do is we require a paid-for-by statement on any mass mailing, recorded telephone statement -- recorded telephone message, yard signs, posters, billboards, et cetera, for those sorts of -- the phrases, when you're -- actually we don't use expressly advocating, but actually when you're expressly advocating on behalf of or against a candidate in San José. So there's the express advocacy component there. That's what we regulate. We do require the paid-for-by statement to state the name, address of individual or committee that paid for that particular communication of express advocacy. What electioneer expand what sort of communications would require the paid-for-by statement. And that would include any -- any communication that is paid that clearly refers to -- that refers to a clearly identified candidate that is made within 90 days of an election for which that candidate is participating or is -- that candidate is running. So it would include more types of communications. It would also apply to more methods of communication. So some examples could be, I mentioned right now, we regulate mass mailings, recorded messages, posters, yard signs. This could include e-mail or Internet communications as well. As long as there is a payment made for that communication. This isn't to regulate for example an e-mail that I send to my friend saying I really think you should vote for candidate 1. It's not going to -- it won't -- there are a number of specific exceptions that are listed in the ordinance. It also wouldn't regulate my own personal conversation with a friend saying I really support so-and-so. The list of exceptions there really made -- is an effort to cover a lot of member communications, for example, from organizations, memorabilia like bumper stickers and pins, for example. So there are some exisk exceptions. Not only is that paid for by statement required, once an independent committee makes an expenditure of a thousand dollars or more on an electioneering communication, they would need to file a report, a disclosure report with the City Clerk on a form approved by the city clerk that would identify the name of the committee, the address of the committee, and then the amount of the payment made for that particular electioneering communication. In the event that the committee received a contribution, I give a contribution to a

committee that's going to make an electioneering communication and it's for \$1500 and I specifically say I want this to go for those yard signs you are going to distribute all throughout my district. Then my specific earmarked contribution would have to be disclosed on that report as well. And so those are the significant differences with this new provision, the new part, enacting electioneering communications versus our current campaign communications section. There are a few -- three categories of changes that relate to the elections commission. I mentioned them before. The -- we've made some clarifications to the term and qualifications to the commissioners, outlined on the memo. If you have any questions, I can answer those. The way the commission does business would be significantly changed potentially by this other recommendation about imposing how the penalty may be imposed. Right now, the way the ordinance reads, 3 members of the commission who found a violation have to be those three members who vote imposing a penalty. But things happen. Time may move on. There may be a gap between the time of the finding of the penalty, commissioner terms may expire, they may resign. What this new provision would do is permit any commissioner to vote on the penalty as long as they certify they reviewed the entire record. And then the final provision that is recommended by the elections commission takes this requirement of confidentiality over claims filed with the commission and codifies it into title 12. Currently you may or may not know that there is a confidentiality agreement in the hearings of the elections commission this provision would codify that in title 12 and give rise to jurisdiction that the election commission would have, if a complaint were to arrive about a violation of confidentiality. You've all been very patient during my presentation so I will field the questions now.

>> City Attorney Doyle: I would -- if I could add. We received a -- from the chamber of commerce some questions that we wanted to address, they're good questions about the operation of the ordinance. And Lisa I think you've got that.

>> Lisa Herrick: I'm sorry, I went off notes because I just started to go off my PowerPoint notes. So I apologize. The chamber had specific questions about the electioneering piece so let me just go back to that slide. The chamber has questions about section C and D in the proposed ordinance, and C really talks about the paid-for-by requirements and D talks about the disclosure statement that independent committees would have to file. So the chamber asked whether or not, if you participate in a San José election, when would you be exempt from following the revised requirement contained in the proposed ordinance, particularly items C and D? And the answer is, when I speak to my personal conversations with friends, e-mail I send to a friend basically if you are spending money and it's over \$1,000 and you're referring to a clearly identified candidate within 90 days of an election that meets the electioneering communications test. Next question is, do the proposed revisions require all organizations and individuals, whether business, labor, neighborhood organizations, to comply with items C and D, the answer is yes, again. Once you spend over \$1,000 to make an electioneering communication, the paid for statement as well as file a disclosure with City Clerk is invoked. If an individual were to fund a mass mailing would they be required to register as yes, the political reform act requires an independent committee can be a group of persons or an individual person. once you spend \$1,000 or receive \$1,000 you are termed a committee again under both the state and local law.

>> Lee Price: Lisa, if I could, independent committees they don't perpetuate year after year. If you become an independent committee, say Lisa and I decide we want to participate in an election and we pull our money together and do an electioneering communication and we file a report relative to that communication, once the year is over with, the calendar year is over with, we are not required to continue to file. We don't continue to be a committee unless we continue to have activity in San José elections.

>> Lisa Herrick: The next question is, will items.

>> Councilmember Constant: And D reporting requirements apply to funds developed by Sur gases. I.e., any group engaged in San José elections. If I understand the question correctly, any group, any person or group of people who spend money, \$1,000 or more, become a committee, and if that expenditure is for an electioneering communication it triggers the requirements that we've discussed. The next question is, what will be the enforcement tools for implementing the proposed ordinance revision? That's the elections commission. So to the extent that there's a question about any portion of the ordinance, the elections commission will have jurisdiction over them. And then next, the impacts the civil penalties that apply to any violations of tile 12 are essentially reprimand or civil penalties, fines, and those would apply to these violations as well. And Lee has something to add.

>> Lee Price: Thank you, Lisa. I just wanted to interject here, the City Attorney and the City Clerk are both provided the someone is not complying with the ordinance, I do that as a matter of course, every election cycle. Someone may not know the rules and be if it's pounded out to me or I see something I will

contact the candidate or the treasurer and let them know that there is this additional requirement. Sometimes we do some education without the need for a complaint to be filed with the elections commission. Also, when the city council does adopt new professions as we are asking you to do today and as you have done in the past, we make every effort to do some outreach and let affected parties and stakeholders know that those amendments have been made to that ordinance. And to that end we have been doing outreach as was outlined to an early distribution memo that went out to you. And we do plan on doing some outreach as it relates to these provisions to help spread the word and make sure people are aware of our new requirements.

>> City Attorney Doyle: Thank you. And I just wanted to conclude by summarizing, this really moves us to a disclosure format. The clerk and our office and the elections commission have worked very close. I know they spent a lot of time in their subcommittee going over this. The disclosure issue is something we know we can get more timely disclosure. To the extent that we had contribution limits and we're asking for suspension of that, that is really in light of the fact that the jury is still out as to how far we can go on those contribution limits. And you know, this is a frustrating task from a lawyer's standpoint. I recall when I was in law school reading a water gate reform, campaign reform law that was thrown out in part by the United States Supreme Court. It is the case of Buckley versus Vallejo. Notful has changed since then, they haven't given us any clear guidance and that's four years. We need to see where there is a case pending with the United States Supreme Court now, as well as this long beach case in the ninth circuit, we're e-hoping we'll get clarity but no certainty. We're hoping to come back to you when that decision comes back and give you more guidance.

>> Mayor Reed: Before we get any comments from the council. The elections commission comments, give you that opportunity because the elections commission invests a lot of time and effort on this. This would be the time unless there are questions.

>> I hadn't really planned to say anything today, which is good for you guys. So -- and Lisa I think did an excellent job of covering things. So I'll just mention that a lot of time and effort and thought did go into this on the part of the Commission and also the city attorney's office and the City Clerk's office. We did public outreach particularly on the finance issues as was mentioned. And this recommended ordinance was passed unanimously by the elections commission. So we're all solidly behind it and I recommend strongly that you support it and vote in favor of it today. Thank you.

>> Mayor Reed: Okay, Councilmember Liccardo, questions.

>> Councilmember Liccardo: Thank you, mayor. Just wanted to thank Mr. Smith and the rest of the commission members. I know that this has been a very time consuming project, challenging materials. I want to thank Lisa, Lee Price and your team. I know many, many hours went into this and not only is this challenging intellectually, but you're dancing on as courts are moving on it we appreciate away you have invested here. I have only one follow-up question on the series of questions we asked to Lee and ultimately to Lisa. And it was a follow-up question relating to late mailers. I understand there is an exemption for slate mailers from the definition of communication, and I know many of us have strong opinions about slate mailers and in many ways they are some of the most misleading kinds of electioneering kind of communications.

And what we were told was, that under state law, a person -- or a pact that would be issuing slate mailers are already required to disclose it. And my concern is, is that state requirement still -- does that still apply even if it relates wholly to a local campaign? That is, if only councilmembers are on this slate? I just want to make sure it's no loophole on that.

>> Lisa Herrick: I actually don't think that that requires -- that there's a triermt file a disclosure statement if the slate mailer refers to a local candidate. So I think that's something that doesn't -- that that would not be required under the current -- the FEPC requirements for slate mailer organizations.

>> Councilmember Liccardo: Okay.

>> Lee Price: So that type of electioneering communication would have to be disclosed with the city.

>> Lisa Herrick: You know, because it's a specific exemption, you're right.

>> Councilmember Liccardo: Yeah it is. That wouldn't be defined as electioneering. You said loophole it definitely would be an exception. So the -- part of the response we gave back to your office was because slate mailers organizations, slate mailers are definitely defined as including four candidates or issues or more, the value of the slate mailer is somewhat diminished in terms of the effect on the individual candidate, it's diluted somewhat because there are a number of candidates and issues on a particular slate mailer. But that's something that the council could discuss and consider and make a change to. This is something that -- this exception is in both the San Diego and San Francisco electioneering

communications ordinances, I believe, I think in San Diego and also in San Francisco. But it is something you could discuss and decide to omit as an exception.

>> Councilmember Liccardo: I don't know why, is it simply because state law covers some use of slate mailers? Is that the rationale?

>> Lisa Herrick: I think that's in part the rationale, where you're getting disclosure in some part.

>> Councilmember Liccardo: Yeah. Let me explain what I've seen out there with some of these slates. And I said misleading because I think all of us have had experience with slate mailers where we're seeing really misleading statements. Someone will call themselves a democratic organization of some sort. They will mail them to democratic households. That kind of stuff happens with some frequency. And that's what I find troubling, is that it's essentially a play to play for a message that is quite often very misleading. And so it certainly would be helpful to have that kind of disclosure. And I understand we're very late in the process to start monkeying around with the ordinance. I'm open for discussion.

>> City Attorney Doyle: This is your first reading. It's got to come back in two weeks for a second reading, in any event.

>> Councilmember Liccardo: I would make a motion to approve. I think it's a great work. I would make the motion to approve with that amendment being removed.

>> Mayor Reed: We have a motion to approve with the removal of that exemption. I had a few questions of staff. You've mentioned that cities have suspended them pending decision of other courts. I was looking at the Sacramento report and they mentioned a couple of the other cities that are not listed, Irvine and San Francisco. It's noted that the San Francisco case is on appeal at the ninth circuit. Is this Long Beach case a consolidation of a lot of cases or just the Long Beach case we're watching?

>> City Attorney Doyle: It is the Long Beach case we're on watch. I hadn't heard of the other.

>> Mayor Reed: Then the other thing is, how comfortable are the staff with what we've got in terms of making sure the people can follow the money? The one exception that Councilmember Liccardo pointed out is sort of the question, is what are the areas where we won't be able for the people to follow the money? Because we know from the 2006 election, where we had all of the rules in place, that there was millions of dollars spent by independent expenditure committees. And a lot of it was not necessarily reported in San José. And you wouldn't be able to find it unless you knew who spent it so you could go look it up on the state Website. So how close are we to reaching a point with this ordinance where it will be easy for the public and the media to follow the money?

>> Lisa Herrick: I think it tightens it up considerably. For one thing, we did not have the campaign communicates, even the current version of the campaign communications ordinance in place at the time. That requirement to have the statement on any kind of campaign literature was not in place in 2006. I think we brought that in in 2007. So that is a significant change. Then I think the requiring committees that are not primarily formed in San José to file their campaign disclosure statements that have been filed in the past as well as in the future, at least gives citizens the ability to track the money, follow the money in some way. And then some of it is just a function of we've got to make all those campaign statements accessible. We've got to scan them and post them on the Website. Make sure that people know that it's there, and then let people do their -- make their own decisions based on the information that we can provide.

>> Mayor Reed: If we approve this ordinance then the clerk will be in a position to do that?

>> Lee Price: Yes, Mr. Mayor, thank you for the question. It does mean that you will be getting more paper. It does mean there will be more monitoring and, you know, logging in campaign statements. But we're already working now in anticipation of that. The additional information will also help me in the preparation of the publication that goes in the Mercury News just prior to the election. Because in the past without fully understanding how many campaign committees who are actually participating in elections who haven't been filing with the city I create this report and I publish it. I'm not really sure, you know, I think this will help in many ways to provide the public with more opportunity to know, you know, and follow the money, so to speak. So we're ready to go.

>> Mayor Reed: The other question has to do about the litigation that the City of San José was in, starting four years ago, I think, maybe three years ago, with Compaq which went through the federal court system, in which judge Ware sitting as a trial court judge found our ordinance to be unconstitutional. The 9th Circuit said, start over, in fact. Does that somehow get into the discussion of the next round of litigation?

>> City Attorney Doyle: Well, you know, you have to sort of look at that and it does raise a question as to the viability, when a federal judge looks at something and says it doesn't -- or violation the constitution, I

think you have to look at that and sometimes it's an invitation to others. But you know, we don't agree that judge Ware was wrong. In spite of the fact that the ninth circuit threw it out on a procedural matter we are defending our ordinance and I think that issue is still out there. But what we want to do, given the fact that we're heading towards a new election cycle is to recommend that -- and I think this is the elections commission's recommendation, as well, that you do something that is defensible. You know is defensible and without question, and you can have rules that are clear and people can operate on, albeit it's disclosure and you until the Long Beach case gets decided. Whether or not we can oppose campaign limits is an open question, we are asking the council to let us come back when we get more guidance.

>> Lisa Herrick: I'd only add that I think we disagree with judge Ware about the constitutionality about imposing limits to independent committees at all. He had some comments that related to vagueness argument that we could take to heart and you can always write something better. And if we get good guidance from the ninth circuit, I think we could look at our current ordinance and write that in a way that is even more clear.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thank you. I have a few questions for clarification. When you were responding to the chamber's questions, one of them mentioned, do the proposed revisions require all organizations, and then it mentions neighborhood organizations. But then, looking at our exceptions, member communications are excepted. If I had an organization, say it was a homeowners association instead of a neighborhood association, whatever, a group of 100 homes, 200 homes, is it or is it not subject to? If you're only sending it to the people in your association?

>> Lisa Herrick: Right, that's a great question and I should have clarified that. Absolutely. If you're a home other than organization spends a thousand dollars and sends it beyond the members of the organization it is an electioneer organization. If the is only the members of the organization, it would fall under that exception.

>> Councilmember Constant: Even though it exceeded \$1,000? That's right.

>> Councilmember Constant: I just wanted to be clear on that. Going back to a committee that is not filing in the City of San José and then they get involved in a San José action, how did we come up with the four-year post election cycle to continues reporting? That seems to me to be a long time, if you've got an election cycle that's a year long, and they file those papers, and then what's the relevance four years later?

>> Lisa Herrick: Lee may have something to add. It was a number we came up with, and it is certainly something you could choose to shorten , two years.

>> Lee Price: The thought was is, two election cycles, there are some requirements in terms of record-keeping of keeping documents relative to an election for four years. So, you know, I didn't just pull it out of the hat. But there -- it seemed to be a fairly good suggestion, particularly because of the two-year election cycle.

>> Councilmember Constant: I was just running on the relevance. going back to the exceptions on the member communications, you have an exception within an exception. You are exempting member communications except those made by a political party. Now I'm wondering if the political party is already filing all their disclosure, why are we duplicating that? Why are we bringing them into our rules, when they're doing member communications within their party? Because wasn't there a state proposition a number of years ago that clarified political parties, and their member communications and contributions to and how they deal with that?

>> Lisa Herrick: I do not know the answer to that about state proposition --

>> City Attorney Doyle: Is your question whether I'm the democratic party or Republican party and I send out a mailer to every Republican or any Democrat as it may be, that's where it's no longer an exception. The logic is where you're so broad based it is really an electioneering activity or a electioneering piece as opposed to a labor group or business group or something along those lines.

>> Councilmember Constant: So are we now imposing additional requirements on them or does that then bring them into a previous group which is a group outside of San José elections at that now has to comply and provide their copies of their 460s or whatever their numbers are to us?

>> Lisa Herrick: Well this piece really doesn't get to the campaign disclosures. This gets to the -- the 460 disclosures, anyway. This gets to a special form that would need to be disclosed. So once a political party spends money in a San José election, then they would come under these disclosure requirements.

>> Councilmember Constant: So then do you --

>> Lisa Herrick: And the paid for by, which would actually apply to them now anyway.

>> Councilmember Constant: So does that then trigger them to the four years, you can imagine then they would be just permanent filers for City of San José.

>> Lisa Herrick: Assuming that the party itself is make an expenditure in a San José candidate election. And then, I guess that would then -- they would then fall into that independence committee definition and that would -- that would trigger them needing to file past disclosure statements as well as future disclosure statements.

>> Councilmember Constant: Hmm, okay. That seeks as though that's a double-whammy there. Let's see, then on page 7 of the staff memo it talks about the commission being interested in examining contribution limits and inflation, then it doesn't say -- is that scheduled for a different discussion or when is that planning to come back? I think that's the only reference I could find in here to that.

>> Lisa Herrick: The discussion about contribution limits generally, there was a study session and some outreach and some discussion at the commission about that. Once the commission decided to recommend suspending contribution limits to independent committees, the discuss or the further consideration of increasing contribution limits, that discussion stopped. As it relates to contributions to candidates and controlled committees, that discussion as it relates to the candidate contributions, the commission actually heard testimony from a former elections commissioner, that the candidates were -- when there had been some outreach done, I want to say three or four years ago, that there was not a great deal of enthusiasm about increasing contribution limits. So I don't know whether or not the commission will decide to take that up in light of that particular comment.

>> Councilmember Constant: Okay. So basically, it's not on the work plan? It's kind of just referenced there but there's nothing else going on?

>> Lisa Herrick: It was referenced there. It is not agendized for any further work now, that's correct.

>> Councilmember Constant: Okay. As usual, I forgot my last question so I'll come back if it ever makes it back.

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: Thank you. Just a couple of clarifying questions. The first one is, in regards to the pay for by, but are we also requiring these committees to include the FPPC numbers?

>> Lisa Herrick: We do not, in this particular proposal. It's not something -- it was certainly something that we could add. There is value in that, obviously.

>> Councilmember Nguyen: I think we should. Because I think it's easier for us to look up the particular committee, if we have the FPPC committee, instead of looking at whether this committee was legitimate my formed or not.

>> Councilmember Liccardo: I'll be happy to amend my motion.

>> Lee Price: Am I in the right section Lisa, disclosure of electioneering --

>> Lisa Herrick: Yes.

>> Lee Price: That is what people often roofer to as the FPPC number it is actually issued by the Secretary of State but it is the campaign I.D. number and yes, we are asking for that information.

>> Councilmember Nguyen: Okay, great, thank you. And then the other question I had, an issue that came up in the past and I'm sure it will come up again in the future, with the ability for the election commission to meet perhaps within three to five days, when they receive a complaint from the constituents in regards to a violation of campaign ordinance, either from the candidate or from a particular committee, and sometimes when this happened, within a week of election day, it's really difficult for the elections commission to meet. I just wondered have we thought about that and how can we have a discussion of that in the future to include that as part of this proposed ordinance?

>> Lisa Herrick: The elections commission actually has had a great deal of thought on that. There was a subcommittee that met on that and made proposals on their investigations and hearings. That is something we have not yet brought to the council, because this had a little bit more urgency in terms of getting something to you. And vice chair Smith really, really wants us to bring those changes. The commission has looked at that. Some of the practical problems is just doing the investigation, and getting a report written. The evaluator tries to do it as quiblight as possible. I think when there is a pending election, the urgency is greater and they do their best to move mountains to get a report done. But some of the recommendations from the elections commission that we willing bring back to the council soon impose some requirements on the evaluator to submit a written request for an extension of time to respond and really be in a closer connection to the elections commission, because they have a similar role as you.

>> Councilmember Nguyen: And then a final question, this is probably for the City Attorney, I suppose Councilmember Liccardo's motion includes the distinction and contribution units for independent committees. But that particular section requires a two-thirds vote. So if that's included in his motion, and should the motion fail, because of fives or six or four and seven then should we separate the two because I'm comfortable --

>> City Attorney Doyle: We can separate the two if -- you know, we had assumed that maybe, we maybe we're hopelessly optimistic, that this would sail through. We can actually separate the two, if there is a concern and we want to bifurcate and take up the suspension separately.

>> Councilmember Liccardo: I'm happy to bifurcate if that's easier.

>> Councilmember Nguyen: Thank you, those are all my questions for now.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you mayor. I want to extend my thanks to the elections commission, as well as Lisa Herrick and Lee Price of the clerk's office for the tremendous amounts of work being put in on this. Three areas I want to inquire into. One is a clarification on the ability for an election -- elections commissioner who subsequently appointed but didn't hear an underlying complaint. Just want to get some clarification that if there's tapings of the hearings or whatever they do their homework. How is it certified that they've done that, do they say that or --

>> Lisa Herrick: It is. It really does require either reading or listening to audio versions of the testimony as well as reviewing the entire record. So the complaint, the evaluator's report and all the attendant documentation.

>> City Attorney Doyle: It is scijtd with California case law' and we just want to make it clear to the world that our own law allows us to do that.

>> Councilmember Kalra: I think that's a good clarification and additionally, I think that coming's suggestion is appropriate and I guess it's already in there. That UPC number certainly is not so important. I have a question for Councilmember Liccardo, I think the amendment to the motion at least what's in the recommendation regards a slate mailer. Is that the one change is to not have that as an exclusion?

>> Councilmember Liccardo: That was the only change I had in mind. Cz okay, thank you. And anonymous that the enforcement of the constitutional limits have been bifurcated, I have a couple of questions in regards to that and concerns with that particular item. But the first question is are there -- I know there's litigation in Long Beach and as the mayor indicated, potentially going on in Sacramento as well and the sprord taking it up, have there instances of that being struck down or affirmed or is it an open question that we're just waiting to hear back on?

>> Lisa Herrick: Interesting question. The lower court, trial court, U.S. district court and Supreme Court actually upheld Long Beach's ordinances. Long Beach is in a different position than we were. Their decision to PACs, political action committees, was a constitutional ordinance. I'm aware of a federal case from Long Beach in 2005, there are courts that have determined these sorts of laws are constitutional. They're not binding upon us and the ninth district court.

>> City Attorney Doyle: The ninth circuit which covers the entire state will give us some guidance .

>> Councilmember Kalra: You know, it's hopeful that we'll get specific guidance. There's no assurance, you don't know exactly what the court is going to do. The concern it raises is we have constitutional limits, we're from the commence of the of fundraising in the next election cycle and I just don't know at this time if we're comfortable having no contribution limits at all. And I certainly appreciate the more stringent disclosure requirements. That's definitely a good thing. But in any case I just wanted to ask a couple of those questions, appreciate the fact that we'll be considering it separately from the rest. Certainly the overwhelming work that's been done, we certainly want to be considerate and vote as quickly as possible. Thank you.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, mayor and actually Councilmember Kalra asked some of the questions I wanted to ask you regarding the recommendation to actually suspend the independent contributions, limit the independent contributions. I'm glad that you were able to clarify what's happening in Southern California, what's happened in southern California versus Northern California. But I think that we as a city, and I know this was implemented from various councilmembers that have come before us, that there was a reason why they wanted limits on contributions, whether it was on the council, the mayor on independent committees. And I would be really uncomfortable suspending that particular ordinance, or law, at this point, and I think we just need to be patient and see how things play out, and we can revisit

this when there is a decision made from the courts. So Rick, I don't know if you have any comments on that but I feel very strongly on that at this point.

>> City Attorney Doyle: Yeah, and I completely understand, and you know, philosophically am in agreement with the need for some kind of limit. That being said, I think the reality is that we are in litigation currently, and if part of a way of putting a stay on that proceeding, and -- or a standstill, is to adopt a provision that would suspended the operation of this contribution limitation, and then we can focus on the new ordinance and then sort of watch the courts as the ninth circuit decides, and the Supreme Court comes back on a separate case. And I would also note that we're in good company. I think Oakland was challenged, it was struck down, they have stayed their litigation, any appeals pending Long Beach decision. San Francisco is in a similar position. I don't think any litigation is pending, but they've stayed their ordinance and we've mentioned Sacramento. I just think it's a prudent course to, you know, wait and see. Because if we start enforcing this, we could stand another challenge. And you know, with hope, we had hoped that we'd have the Long Beach decision by now, there was a Supreme Court decision but it got kicked. I would understand but I would think that we need to at least in trying to protect the city from further exposure, that's why we're making the recommendation.

>> Councilmember Campos: And I appreciate that. But we also could be opening up a can of worms the other way, too. Because now then we're inviting a few organizations or a few individuals that maybe have the ability to form these independent committees, and put in a lot of money which then, we are dealing with inequality, in an election that is coming forward with other councilmembers who will be look for those seats. So I hear your argument, but I want to thank Councilmember Liccardo for agreeing to separate the two, so we can move forward with the work that the elections commission has been working on and be able to implement those recommendations that seem to be very fair, and will strengthen our ordinance as we move forward. Thank you.

>> Mayor Reed: City Attorney, could you talk about what happens in the middle of -- sometime next year, on when we get the Supreme Court decision on the or the Long Beach matter in the middle of the elections cycle, which seems likely? What do we do with our ordinance?

>> City Attorney Doyle: I think we would -- right now, the way this is drafted, the suspension would be for the later of either the decision in the Long Beach case or December 10th, 2010. And the reason for that is, want clarity that the law doesn't change in the middle of an election cycle. So we know what the law is and we're not going to be changing the rules. And that's how it's proposed. To the extent, though, that the court does something that, if it throws things out or gives us guidance, that says that you can have limits under certain circumstances and with certain guidelines, then we would come back to the council with a recommendation, probably through the elections commission initially, to get their first read and take, because there is a lot of outreach that they do, and they can filter a lot of the earlier concerns. But that's I think how I'd see it.

>> Mayor Reed: Go ahead, sorry.

>> Lisa Herrick: I just wanted to remind the council also that from the time judge Ware struck down our ordinance in September of 2006 until the 9th circuit essentially ordered judge Ware to dismiss the case, which was October of 2008, our ordinance was unenforceable. We weren't enforcing our to independent committees, really we haven't since October of 2008 . That really spurred the elections commission and thought process and got us where we are today. but for all intents and purposes we have not been enforcing our ordinance since September of 2006.

>> Mayor Reed: I remember the difficulties getting an adverse decision, we got it two or three weeks before election day .

>> Lisa Herrick: September 20th.

>> Mayor Reed: A little more than that. But it was virtually impossible for us to respond. We had a special meeting, talked about it and ultimately the city council decided there wasn't much we could do even with an emergency ordinance . So it's disruptive to find out what they are in the middle of the cycle. Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. I just wanted to speak in favor of the whole slate of recommendations both that said, I think it's important that Rick Doyle, our City Attorney, mentioned the reasoning for managing, that how other cities are in the same boat so we're not just doing something alone. And side note to that, and since Michael Smith is in the audience, I would say though that the elections commission might want to start looking at raising the contribution limit. Because when we look at where they were last raised versus today? The price of a stamp has gone up 200%. Especially for the candidate who really wants to get the opportunity to serve residences of the City of San José and not go

through special interest groups, you're trying to raise money, it's difficult to get up there. But having an elections limit that is higher, could help those who are not in city government, come become in city government. Thank you.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor, I just wanted to hear the staff comment as well as if someone has gained a domain name, I'd like to see how you put it under the category of election. Staff comment?

>> Lisa Herrick: Sure. Unless there's an expenditure that refers to a clearly identified candidate within 90 days of an election, it's not going to be considered an electioneering communication. When we're talking about intrnl advertising for example acknowledge it would require the examination for a communication that refers to a clearly identified candidate, within that specific time frame.

>> Councilmember Chu: So if somebody spanned, I don't know -- suspend, I don't know, less than a thousand dollars, and get a domain name, and start doing some negative campaign on that Web Website, how do you at least declare their identity FPPC number paid for by so-and-so?

>> Lisa Herrick: Once -- the answer is yes, once those expenditures gets up to \$1,000 or more.

>> Councilmember Chu: The question was, also than, some contents in there.

>> Lisa Herrick: Then that would fall within the it would not fall within the definition of an electioneering campaign.

>> Councilmember Chu: So my friendly amendment is to include that, instead of just sending a random dollar figure to be considering into consideration include a domain name and a Website into the consider it bleakseer communications.

>> Councilmember Liccardo: If perhaps I could have some guidance from staff, I'm not really clear about what the statute now -- what the proposed ordinance would say, whether Websites are at all mentioned specifically or if it's simply uniform \$1,000 rule, and Councilmember Chu would be suggesting an exception of \$1,000 floor.

>> Lisa Herrick: If I'm understanding correctly, that's what council is suggesting, any form of communication, it is purposely broad, we certainly know people communicate through e-mail, we don't know what technology holds there are a number of thresholds you've got to meet. It's got to be paid for. It's got to be \$1,000. It's got to rear to clearly identify candidates. It's got to be within a time frame and that candidate has got to be running an election, so --

>> Councilmember Liccardo: Councilmember Chu raises a good point, the thousand dollar limit appeals to a certain type of campaigning. And now we are in the communications age and we can reach thousands of people for virtually nothing. I'm interested to know what the rational for the period. i'm interested how they resolved that.

>> Lisa Herrick: The elections commission did not specifically discuss the limit. Once you start -- basically that thousand dollar threshold means wurchtion you start receiving money an spending more than and you get the thousand dollar threshold, you've considered a player \$consideration the thousand dollars and it's consistent with the definition of committee and their requirements that kick in in terms of expenditures and what you have to startle reporting with the FPPC, for example.

>> Councilmember Liccardo: Okay. And I'm -- I have to admit at this point I'm bit torn. Because I understand we don't want everyone flying under the rarity. You're saying we're trying to think that the ordinance meets sun law so everyone understands. That thousand dollar, does that come from FPPC, right?

>> In both the filling and the law there is no companion ordinance for electioneering legislation in federal law.

>> Councilmember Liccardo: Okay.

>> Federal has some but there are a handful of electioneering, it's a threshold amount for reporting and disclosure. Basically for reporting obligation. It is something you could choose to radios, I think.

>> Councilmember Liccardo: Sure. Let me ask Councilmember Chu. Given the fact that I think an all of lot of this would require a fair amount of discussion and probably not something we want here on the days , which are that will result in mass communication that clearly are inexpensive, and I think we can readily identify what they are. They are you know, Facebook Websites, e-mails, twitter, et cetera, have them come back to us with San José that really addresses modern electronic communication specifically.

>> Councilmember Chu: Definitely. This method of communication is agreed upon. Also, the question is, if we lower the threshold from \$1,000 to \$250,000, are you violating any state or public law?

>> City Attorney Doyle: The thinking is if it is a de minimus amount, we can look into the concerns. The reality of this is unfortunately true, the law takes a lot to catch up with the, four years ago.

>> Councilmember Chu: Exactly.

>> City Attorney Doyle: We may be on cutting edge here so we may need some time to think about it.

>> Lee Price: Mr. Mayor, if I can add just a practical application of that. So to Lisa's point, electioneering communications is within that 90 days. Oftentimes, the candidate may test the waters, so to speak, get a domain name, it doesn't cost a thousand dollars to do that, it's less than that. But once a candidate is out there talking about becoming a candidate, and they are required a form 501 notice of intention as you know with my office, even if they haven't spent a thousand dollars. If they're out there testing the waters, they're saying, you know, I think I'm going to run for council, that sort of thing. Once they become an official candidate they started to make expenditures, they have to disclose that so I think that for the most part, we're getting and will get disclosure of those expenditures so people will know where they're spending their money. But it's really that 90-day period where we're asking for disclosure within 24 hours, if there's a \$1,000 or more expenditure which is consistent with state law and their requirements to file late independent expenditure reports. So that -- those last few days especially where people are starting to throw money into their campaign. But I also can say that as the committee, as we looked at this, we knew that we wouldn't be able to specify in great detail all the various technology scenarios if you will, because technology is just, you know, expanding all the time. So we did talk about it, and we realized that we might not be able to specifically address it in the ordinance. But I just wanted to add that from a kind of a practical application of generally how people start their campaigns and get them moving.

>> Councilmember Chu: Thank you very much. I -- my concern is specifically trying to address a negative campaign and taking advantage of this thousand dollar threshold.

>> Councilmember Liccardo: Councilmember Liccardo. I think --

>> Councilmember Liccardo: I'll withdraw it.

>> Mayor Reed: Okay. Councilmember Herrera.

>> Councilmember Herrera: I have -- thank you, mayor. My question was a little more general than Kansen's, it's a very economical way to do it, it's an instantaneous way to do it. So I really think that we do need to address this. You know, with what we put together, because I think it's happening now, and it's the wave of the future and it's just going to become more and more, you know, prevalent waive communicating. It's totally different, a way of comparing apples and oranges. Printed materials, you reach \$1,000 very quickly but with electronic communication you have more bounded if they had reached \$1,000 how would you apply the rules to e-mails and other electronic communication?

>> Lisa Herrick: I think you would have to -- I can imagine that there are groups that sell e-mail lists, e-mail address -- much as, you know, a mailing labels in, I think, the olden days, where you could buy a particular mailing label group, I think it's the same thing for e-mail addresses, to the extent that someone has a group of e-mail addresses that they're willing to sell to someone, and you can then purchase those e-mail addresses, and it's going to be over \$1,000, I think that's -- that's where you would -- you could capture that or Internet advertising to the extent you have a banner ad and you're spending money to place an advertisement on a Website and it exceeds \$1,000, that's how you get there. Those are just some things that pop to mind immediately. I'm sure there are plenty of other examples that I just haven't thought of yet.

>> Councilmember Herrera: So all the disclosure information you would have in written form would have to be on those e-mails and any kind of electronic communication, is that correct?

>> Lisa Herrick: Yes.

>> Councilmember Herrera: And --

>> Lisa Herrick: That would have to be on there yes.

>> Councilmember Herrera: Maybe there was an initial paid amount but then those things could get forwarded on adds infinitum numbers of peoples, and that wouldn't be part of the tracking process so I'm just --

>> Lisa Herrick: That's true but if I have a mailer and my neighbor didn't get the Merrill and I hand it to my neighbor, I question -- to me that's the sort of speech that we really do need to protect. That there's not many involved in that and that's the other piece about where, if you are really trying to track money in campaigning, if money isn't being spent, is there -- are you not having large special interests with a lot of cash influencing elections like you think they may be? I mean if you really are having some sort of a grass roots campaign and you're using electronic media to do so, and I'm handing my mail to my neighbors or up the sort of speech that I think we do less to diplomatic .

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thanks. Lisa actually just touched on what I was going to say. You know, the intent of this is to follow the money, not the message. And the First Amendment I think is pretty clear that it's designed to precisely protect political speech. So if the fact that someone can register a domain name online for \$8 and send out a million e-mails for next to nothing, they don't even need to buy an e-mail list, there's a way to do it or to create a Facebook page or any of the other social media, I don't think we want to go anywhere near trying to regulate that type of speech. It would be subject to a First Amendment challenge because now you're talking about regulating people's ability to political speech vs. following the money. You could maintain a campaign and do it for under \$250 and contact thousands and thousands of people. If you want to do that I don't think we should get involved in regulating that sort of speech. First of all, there is no way to track where those messages go. I think we would be getting into just a hornet's nest of information. And all it does is change people. You know you register a domain for \$8, create a blog and start blogging about a person. There's no way I think you could expand that to be electioneering even if it really was only about a person. Because that's no different than someone printing a general circulation newspaper and sending it out there. So I think we have to be really, really cautious in going in that area, and keep in mind our intent is following the money of politics, not following the message of politics.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: I actually agree with Councilmember Constant in principle in that we have to be wary about electronic communications and how we limit it. There is First Amendment concerns and objectively you can see the concerns of using Facebook and other social media and creating a Website that is specifically targeting someone. So maybe there could be a discussion in that regards. Specifically or particularly if there's a website that's created where there may be funding and/or data that is provided to the Website. There may be some nuances whether someone has the right or someone is exercising their freedom of speech. It is something Councilmember Chu brought up and I think it would be worthwhile for the elections commission as technology evolves and as this is used on a much wider basis but it may prove to be difficult because of the nature of the Internet and the way it's being used. And that in many respects, this openness with the Internet has allowed for much more accessibility to the average citizen, whether it be someone who uses youtube or witnesses something or has a blog or Website where they can express themselves, in some ways you are seeing a Democratization of those messages. In regards, back to the issue of spending, the enforcement contribution limits. I had a question, I don't know if this is something that can be stated so simply. But was that a recommendation by the city attorney's office or a suggestion from the City Attorney's office or the elections commission which they agreed with or was spurred by the elections commission? Because it seems to be targeted because there is ongoing litigation. It may be better if we suspended it for A, B and C reason?

>> Lisa Herrick: I think that I -- and vice chair Smith can correct me if I'm wrong. I told the commission and I told the council, I briefed this thing from the trial court and Supreme Court, I think as the counsel for Long Beach, that is what I told the elections commission and the elections commission considered that, and we certainly talked about, I think the commission was interested in finding something that wouldn't be caught up in litigation. Because we certainly could keep our contribution limits in place. We've got this pending lawsuit. We'll litigate it, we could end up with a direction suspending our ordinance and spending good money after bad wasn't really the focus and the disclosure I think the attorney mentioned was something that we felt confident about.

>> Councilmember Kalra: Okay, well, thank you for that. And I think that ultimately this comes down to whether or not you want to stand behind the principle and balance that against whatever negative consequences may come. Particularly as the mayor said, mid election cycles can cause confusion but given that risk and balancing that with the standing behind the principle of having contribution limits and enforcing them, I certainly would err on the side of principle, in having those constitutional enforced and would simply hope Ms. Herrick, to have your decisions correct. .

>> Mayor Reed: The fourth Circuit Court of appeal, the North Carolina right to life league versus Leakey, in which they said contribution limits were unconstitutional.

>> Lisa Herrick: I read this case, the focus there was the prohibition of certain cases that was different than the disclosure piece that we're talking about here, the federal law actually had a prohibition against spending money on electioneering communications so I do not read that decision as to whether or not getting at whether or not it's constitutional to independent committees at all, but others disagree with me, so --

>> City Attorney Doyle: And that being said, you know, we've been defending our ordinance from day one and while I agree with Lisa that I think we can -- it's defensible, the concern remains that we have exposure. And the ordinance has not been in force for many -- a number of years. And just since this would put a standstill on the current litigation that we're in and it's just waiting to see what happens and get more guidance from the court before we come back with further recommendations, that's why we are recommending the suspension.

>> Mayor Reed: Okay, I said we would take the public testimony in a minute. That was about an hour ago. I guess I was a little bit wrong on that but I would like to do that at this time. I have two cards from the public, BenField and then Pat Saucedo.

>> Thank you, Mayor Reed, members of the city council, my name is Ben cp field. I'm here to speak on behalf of the South Bay AFL-CIO. We urge you not to suspend the rule that requires that campaign contributions be limited to independent campaign committees. Those limits help ensure the fairness of elections in this city, and they are essentially to good government in the city. Campaign contribution limits are aimed at untoward influence on political candidates and it's clear that those limitations help prevent political corruption. The California fair political practices commission concluded, in a 2008 report, that independent expenditure committees which are not subject to contribution limits, at the state level, had, quote, dramatically undermined California's campaign finance laws, and, quote, thwarted the will of the people. The campaign contribution thraimghts we have in San José protect the integrity of the election process. The perception that money dominates the electoral process may be even more damaging than the impact of actual corruption on the process due to large campaign contributions. San José's contribution limitation is essential to maintaining public confidence in that electoral process. We understand that there are unresolved legal issues about the level of campaign contributions to independent expenditure committees. But that does not mean that those limits should be suspended. We know that there is some concern about litigation. If the city --

>> Mayor Reed: Sorry, your time is up.

>> If the city retains, thank you.

>> Mayor Reed: Pat Saucedo and then Ross Signorino.

>> Mayor and council, Pat Saucedo, San José chamber of commerce. First would like to thank the staff the elections commission, for the recommendations before you this afternoon. I know a lot of time has gone into this. And the chamber always is very supportive of any kind of revision or ordinance that provides, one, a level playing field in politics in San José, and two, full and timely disclosure to follow the money. We think that's extremely important in our community. I also would like to express appreciation for clarification of the questions that were submitted. Just want to ask, as I understand now, that the thousand dollar threshold is a critical component that will apply to any member organization, individual, committee or group, once they expend \$1,000. The revised aspects of the ordinance will apply, and I'm speaking specifically to C and D of the revisions that are before us , is that correct?

>> City Attorney Doyle: Yes.

>> Yes, okay. That's who I wanted to -- and I would recommend full approval by council on all motions before you this afternoon. Thank you very much.

>> Mayor Reed: Ross Signorino is our last speaker.

>> Ross Signorino: Thank you, Mr. Mayor, members of the council. This subject is so complex and so wide, that it has to take an hour, as long as you debated on it. But what I'm here to talk about is tightening the rules and I think it's a good thing for the elections commission, too, we should face another thing and I hope it comes before you at some time as far as who can bring accusations to an individual against the commission and the individual has to defend himself just on accusation, an anonymous constitution at that. What we should do, no one should do something about that unless they come forward and identify themselves and simply not make such an constitution, in the case of Tom McEnery, he's accused of being a lobbyist, and then he has to get an attorney and defend himself. Even in a court of law, circumstantial evidence is good, provided it's good circumstantial evidence. But in the case of Tom McEnery, wasn't good circumstantial evidence, wasn't even circumstantial evidence. I think that rule should be tightened that someone must come forward and you must identify themselves and the accuser must identify themselves. I think something like that should be brought up and you should consider that and have a discussion on that, how the elections commission handle themselves, and I think they did as best they could, thank you.

>> Mayor Reed: That concludes the public testimony. Councilmember Liccardo.

>> Councilmember Liccardo: Thank you. I'd like to ask a question of Ben Field.

>> Mayor Reed: Mr. Field, come down please.

>> Councilmember Liccardo: I know voters feel that way. If the motion were that we would set this on calendar within 30 days of decision in either the 9th circuit or the U.S. Supreme Court, would that at least address any concern that we might be moving too slowly in making sure we have limits, once the court has actually given us the green light?

>> I'm sorry, I didn't understand your motion.

>> Councilmember Liccardo: Sorry, I'll withdraw it. With regard to the second motion that's on the table which I think you spoke to, I certainly sense and appreciate the need for contribution limits. I think there's a sense that I've gotten from the materials I've read, if we were to have an ordinance in place it would be a full employment act for attorneys and essentially you would probably get stayed district court invalidating and on and on. So the question is, if we were to have some insurance in the motion that we would be back in front of the council within 30 days, the ninth circuit's decision in the long beam case or within 30 days of the U.S. Supreme Court decision in the Hilary case, in that way the Supreme Court could consider how and whether or to reimpose the limits on this ordinance, would that resolve some of your concerns?

>> I think by that time some of the damage might already be done because you don't know exactly when that decision is going to be handed down. And in the interim period, there may be campaign contributions that unduly affects the electoral process in a way that the city council as expressed in the ordinance, which is already in place, would not want.

>> Councilmember Liccardo: Okay.

>> That would be my concern.

>> Councilmember Liccardo: Yes, thank you.

>> Thank you.

>> Mayor Reed: Anyone else on that? We have on the floor two motions. Councilmember Liccardo made the motion, we're going to bifurcate them. First motion is, all the recommendations from the elections commission, with one modification to eliminate one of the exemptions for slate mailings. And pulling out, bifurcating the recommendation regarding suspension of the contribution limits section regarding independent structure committees, not candidates.

>> Councilmember Liccardo: And regarding the matter raised by Councilmember Chu.

>> Mayor Reed: And a special looking at the electronics communication part of this. Those are the two items to be voted on, so we should -- in the by fur cakes we had vote first on everything except the constituency provisions, I believe. We should vote first and we'll come back to that. Any further discussion on everything except the suspension portion of it from the council. All right, we have a recommend to approve with a couple of changes. All in favor, opposed, none opposed, that's approved. All right, the last thing to vote on here, and I was trying to show the section in the staff report.

>> Lee Price: Section 11.

>> Lisa Herrick: Section 11 of the ordinance? Yes.

>> Mayor Reed: Of the ordinance. FTC which proposes to --

>> Lisa Herrick: On page 10.

>> Mayor Reed: Section 10?

>> Lisa Herrick: I'm sorry, on page 10 but is section 11.

>> Mayor Reed: Page 10, proposes to suspended one two three columns until we get a decision from the oops whichever is better. If this motion passes, those provisions will be suspended until there. If it doesn't pass what do we have in place? What is the ordinance look like then if this motion does not pass?

>> Lisa Herrick: The current version of our ordinance as it's set out in with the dismissal of the district court case by judgware all of those section are in play. I might suggest, though, that if the council were interested in having a different time frame, that might be something that you could consider. As opposed to the December 2010 date.

>> Mayor Reed: Okay, but the motion was for the staff recommendation and we just bifurcated that out. That's the December tent date. I'm going to support this item, because I think we don't we'll have a gift to the lawyers, it will be litigated and we'll lose. The facts have been looked at by federal judge Ware, it matters how many hours of lawyers' time it takes before we get there. So I think we'll end up paying a lot of attorney's fees in the process and so I favor waiting until the ninth circuit gives us an answer so we can avoid the risk, the litigation risk of doing that. I think the disclosure provisions that the council has just approved are really important, extremely important, to letting the people know where the money is

going. And be able to watch things. And we know in the last elections cycle that I referred to earlier that millions of dollars of expenditure got spent despite the limitations on those that we attempted to impose so these limitations are not going to stop the flow of money. The important thing is that the people will be able to follow the money. So I'm going to support the motion and wait and see what the ninth circuit tells us. Councilmember Pyle.

>> Councilmember Pyle: I just wanted to clarify. Those who are running for and those would be all the odd-numbered councilmembers. Not the odd councilmembers, just the odd-numbered ones, will not be able to begin raising money until the end of the year, is that correct? And so if we know before the end of the year, there really won't be any kind of a problem, I wouldn't think.

>> City Attorney Doyle: Well, that is, these are independent expenditures not candidate expenditures. So they're a little bit different. The issue is yes, the candidate cycle begins in September, the election cycle. If we got a ruling by that time at least we could have some guidance. Right now we don't have a date for oral argument. It's in Pasadena and it could be some time in fall.

>> Councilmember Pyle: Thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, Mr. Mayor, I will not be supporting the motion. The election cycle is coming around from 120 days from when the slit can -- start seeing independent expenditures from who knows, how many differently parties? But the reality is, we don't know if we're going to lose the court case. We have some optimism from Ms. Herrick. Of course I'll never hold her to her opinion but she has more research on this issue and studied it better than any of us up here and I think ultimately comes down as Councilmember Pyle said, if there is a decision which comes sooner rearnt alert, which is probably not the case, in December or January we can always come back and make appropriate adjustments. More likely that it won't be in before the end of the year. And then we'll have no noamplet at all, and so I could certainly err on the side of having the principle of contribution and campaign limits in terms of the litigation but I don't want to suspend enforcement contribution limits because of the risk of losing and because of the risk of potential or actual litigation cost. I think the return bears the expenditures.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Mayor, I, urned being considered, I would love to see Buckley versus Vallejo overturned by the Supreme Court, unfortunately it's been the law for well over 30 years now and we have to live with it. My concern is, we're already involved in litigation in which attorney fee costs has run into six figures. This really accommodation down to concern about taxpayer dollars and how we are using them whether we really want them going to attorneys and whether we want our City Attorneys working on these problems or many other problems that we have in the city. And it seems to me whether we have an ordinance or not, we're not going to be able to enforce it. So we have to be realistic about that. That's why I support the staff recommendation, isn't in contributions restriction is I think many of us support them but we understand the reality of where we are until the court decides otherwise. Anybody else? Okay, we have a motion on the floor. I think we've completed debate on that. All in favor, opposed, opposition, Chu, Campos, Nguyen, Kalra, on a 5-6 vote that motion fails. That means we don't need to take any further action, the ordinance is already in place, we're just choosing not to change it.

>> City Attorney Doyle: That provision will be taken out.

>> Mayor Reed: Okay, section 11 in the draft ordinance will be deleted. That's the practical effect of that okay, I believe we're done with this item unless the City Attorney tells me there is something else we need do. There will be a second reading in a couple of weeks before it's effective.

>> City Attorney Doyle: The second reading is in two weeks and the ordinance is effective 30 days after the second reading.

>> Mayor Reed: All right, moving on to agenda item 3.5. I'm sorry, City Manager.

>> City Manager Figone: I'm sorry, I interrupted you. If I could just make a brief comment before the city council takes action.

>> Mayor Reed: This is 3.5.

>> City Manager Figone: I just want to thank AMSP fm Ben bellfry and Phyllis Schultz. This is mayor a true wage freeze and we look forward to working with AMSF on future challenges.

>> Mayor Reed: We have a motion to approve. I want to thank our employees who have come together to help us to deal with the budget crisis of this year. Altogether our employees have given up \$9 million in the form of cop sessions one way or the other. That has helped us save a lot of services and a lot of jobs and we appreciate that. And ufl our work is not done, because of the state action taking not only our

property tax dollars but redevelopment dollars. We're going to be talking about the budget again and again and again, unfortunately that's the way it is. I want to thank our employees for helping us and being engaged with us. We have a motion to approve. All in favor, opposed, none opposed, that's approved. Item 3.6 is report of rules and open government committee June 17th, '09.

>> Councilmember Chirco: Move to approve.

>> Mayor Reed: We have a motion to approve. I have a request to speak on that. Kathy Branhorst.

>> Hi, my name is Kathy Branhorst. I also went by Lisa Maria prelz Jonbenet Ramsey, John steel and I'm also the United States president. Looks like I've been working in this area again. (laughing) I just wanted to let you know, the problem, you know, with communications, is very, very difficult for anybody to understand, you know, what's really going on. And the discrimination between the people who come here and don't want to -- they say don't discriminate. But they are discriminating against the white people. We are very poor. We have no money. And it's very difficult to live. But they still steal from us.

>> Mayor Reed: Miss Branhorst you need to speak about the item before us .

>> All right, I'm just talking about the supervisory personnel. And I'm just telling you now, that we need your help and protection. And also, we need the support from City Hall, you know, to continue to be more supportive in the community. I guess it is. The community is failing, and --

>> Mayor Reed: Ms. Branhorst if you're not going to talk about the Rules Committee report I'm going to have to cut you off.

>> Okay, thank you.

>> Mayor Reed: That concludes the public testimony on this item. We have a motion to approve. All in favor? Opposed? None opposed, that's approved. Item 4.3 is north 4th Street family apartments project funding.

>> Councilmember Liccardo: Prove.

>> Second.

>> Mayor Reed: We have a motion to approve. Councilmember Liccardo did you wish to speak to the item? Okay, motion by Councilmember Liccardo. All in favor, opposed, one opposed, Councilmember Oliverio. That's approved on a -- well, it's approved. I don't know what the vote count is. One in opposition. Item 4.4, kings crossing apartment project. Motion is to approve. All in favor? Opposed? One opposed, Councilmember Oliverio. That's approved. Item 4.5, Curtner gardens inn project.

>> Councilmember Oliverio: I'll make a motion to approve this item. This is an existing SRO in district 6. It is a housing funding to further green the building as we're approaching our goals for the Green Vision. Motion is to approve.

>> Mayor Reed: Motion is to approve. All in favor? Opposed? None opposed, that's approved. Item 8.1, independent police auditor's 2008 year end report and administration's response. Take a minute for our staff to get in place. All right, we'll let Shivaun Nurre take it away.

>> Shivaun Nurre: We are providing our report, updates through December 2008. So to a certain extent, we have had discussions and other activity in 2009 just not reflected in your report, except if it's perhaps tucked away in a footnote. In June, you might have recalled, June 2007, the city council directed the City Manager to implement or to develop a revised complaint process. And that revision was implemented July 1st, 2008. So to a certain extent, this report is unusual, in that we have six months of data under the old system, and six months of data under the new system. So to a certain extent, making comparisons was difficult. And we didn't make any recommendations at this time. We just made some observations of certain issues that we're going to be following. We currently are meeting with City Manager staff and with SJPD to talk about issues, the complaint process and to make suggestions to improve the process. I believe the City Manager's staff will be coming back sometime in the early fall with a report on the revised complaint process after we've had a full year of data. So the slide you're seeing currently is a breakdown of complaints received January through June 2008 under the old system. And July through December 2008 under the new system. Perhaps one of the biggest changes under the new system is the nonmisconduct concern comprising 34% of complaints seched this year. This category has some benefits in that supervisors are actually talk to their staff members about low level concerns that gave rise to a concern and that's a good thing the IPA's office would like better notification of what matters are going to be put in that classification so we can exert our challenge to that classification if we think a fuller investigation is warranted. This slide shows overview of complaints received 2004 to 2008. Complaints dipped a bit this year by I think 24. It may be due to a new definition of what complaint is. Or it may be due to other factors such as outreach efforts by our office, by IA, number of police contacts or arrest. It could be due to a whole host of factors. But we are looking at whether or not it is due to the revision of the

definition. This slide shows complaints and concerns reported by council district. District 3, which contains the downtown district, again has received the most complaints, but that's not unusual, given the arrest rate that we have in the downtown area. And the rest of the complaints are pretty much equally distributed throughout the rest of the districts. This is our top three slide. It shows the three most frequent allegations investigated. They are currency procedure and force and they have been for many years. Procedure, although the number looks high, it is pretty much the same percentage of allegations overall that we've seen. They tend to be about 30% a year. Courtesy has increased in terms of percentages of allegations received. It was 13% of all allegations in 2007 and 2008 is 17%. So our report outlines some concerns we have with that definition and I believe the City Manager's response indicates that she's going to revisit the definition. Force, although it shows a slight uptick in numbers of complaints we haven't seen a dramatic shift. In this year we saw more force allegations with an exonerated finding and less force allegations with an unfounded finding which we think is a good trend. This excluded shows our audit outcomes, comparison of 2007, 2008. On page 34 of the year end report you'll see what things we look at in terms of our audit function. In this year, we closed more cases as agreed. The 338 cases we agreed with 38 -- 83% of them. And I think in large part that's due to the personnel at internal affairs unit. Larry Escovel and lieutenant Mary Lopez are top-notch and they have imparted a high standard of good investigations to their staff, and they're doing an excellent job. In closing I'd like to thank our IPA staff in particular in an effort to save money, one of our analysts brushed up her layout skills and did all the layout in-house. We have a very small staff so we really appreciate her efforts. I'd like to thank the rest of the IA staff and I'd like to thank my IPEC members that advise us on community members and I'm available to answer any questions.

>> Mayor Reed: I think we'll have some questions. There are three parts to this agenda item. This is first presentation, then we have the administration's response and then we'll have the department's internal affairs report on department investigations. There are three parts to this. But if anyone wants to take questions now to the IPA, now would be the time. Councilmember Pyle.

>> Councilmember Pyle: I don't have any questions but I just want to say, this was clear to understand the more cases you close the better the results. In other words, this shows me that by investigating as many as you have, it did make a difference. And so I want to thank you for that. This is really well done.

>> Shivaun Nurre: Thank you. I just want to comment, the detail in the prior report, 2007, if you're missing that and really want to see it, look at the appendix. Let me know if you're missing something that you're interested in seeing.

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: I wanted to share Councilmember Pyle's comments in thanking response you sent out, I'm glad to see that there is also a decrease in the external complaints filed against our police officer department, whether, you know, some of the factors as you stated, we're not sure what they are but to me, this is a really -- a small success towards our collaborative effort. And I see that we're going in the right direction. So thank you for sharing that. I just had a couple of questions. And this is just clarifying questions. But on page 32, you indicated in the IPA 2008 report, that is, you indicated that 55 of the 71 department initiated caser were closed with at least one sustained allegation. I take that to mean that each of the 55 cases have the same allegation that so that means that an officer was actually disciplined.

>> Shivaun Nurre: It is my understanding that if there is a sustained, the officer will get splip that ranges from discipline to termination. You can see how many officers.

>> Councilmember Nguyen: A follow-on question, is there any way to track if the discipline against officers for example, do we have officers that actually you know, violated the same, what do you call it -- violated the same things that they violated in the previous year? Do we see a trend or once the disciplinary actions are taken, that you see an improvement?

>> Shivaun Nurre: Well, for instance, if an officer violated a certain provision of the duty manual, was counseled for it and then the following year it was the exact same duty manual section, our office doesn't track that. I don't know if internal affairs tracks that. Our office does not track that. We do track how many officers do get more than one complaint in a single calendar year. We don't see it or we don't track it over time.

>> Councilmember Nguyen: Chief, you can provide an answer?

>> Rob Davis: Yes, thank you, Councilmember Nguyen. Rob Davis, Chief of Police. Department initiated investigations report, we do obviously pay attention to that and also, if there are sustained complaints against any individual officer, if, say for instance, when we come to the second sustained complaint within

a certain time period, the discipline that has already been Meted out, we are also glad to say the frequent fliers, if you will, are not as frequent .

>> Councilmember Nguyen: Good to hear. Remind me again, what was the rationale behind the eliminations of the distinction between class 1 and class 2 force allegation?

>> Shivaun Nurre: It's difficult for me to answer that Councilmember Nguyen because we had advocating to keep the distinction. So I --

>> Councilmember Nguyen: It was actually for the chief.

>> Shivaun Nurre: Okay.

>> Rob Davis: We're concerned with any force complaint, whether it's deemed to be you know major injury or small injury. We need to look at these things in their totality. We are still able to track what these injuries are that somebody may be having and how egregious they might be.

>> I could just add the distinction was that the assignment into force 1 or force 2 was subjective and motivated more by the complainant and so absent a medical diagnosis we didn't have any information as to whether it was a true -- whether the facts were true. So for example, we had instances of a person dlaimg their shoulder was broken. And so that would automatically go into force 1 but as we started to investigate there was no medical diagnosis or no medical substantiation that the shoulder was broarn. degree of force.

>> Councilmember Nguyen: Under this, the IPA would not know until the case is closed, is that something that was written in your report, is that right?

>> Shivaun Nurre: Well, we won't know until the case can closed and we receive the medical to verify whether or not the shoulder was broken if you are using this analogy. But for instance if someone is coming into our office and claiming their shoulder was broken and claiming it was officer force, in the past that was put on a faster track because typically allegations with injuries such as that are -- raise a lot of public concern and we wanted to make sure they were done within the statutory period. And that's no longer the case under the new system.

>> Rob Davis: Would I like to point out however we have had discussions with the IPA's office on that and there have been discussions among staff to figure out how they could communicate those to the IPA's office more readily so we aren't losing that amount of time.

>> Councilmember Nguyen: Thank you, those are my questions at this time, thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. Shivaun, I want to thank you for your time when you're short of people so thank you for all your work.

>> Shivaun Nurre: Thank you.

>> Councilmember Liccardo: I just wanted to confirm one statistic that stuck out in my mind. Last year when we were here was that I don't believe there were any officer-involved shootings in 2007.

>> Shivaun Nurre: That's correct.

>> Councilmember Liccardo: Okay, and there were none in 2008. In 2000 --

>> Without a single officer-involved shooting. I venture to guess it certainly hasn't happened in too many other big cities in this nation, that's certainly comprehensive the changes in the downtown, I had aan opportunity for ride along and walk alongs in various ways and I'm very optimistic about the changes that have occurred so I appreciate all your hard work, chief, on that.

>> Rob Davis: Thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I wanted to say that in the tough transition period and also staffing, be able to get staff to put things together and in a way that's been organized is helpful in trying to analysis the information in looking at some of the data over the last two years, '07, '08 look pretty similar in terms of calls for service and reachts. I think you already noted that the most notable increase is in the complaints or allegations regarding courtesy. And so you can elaborate more as to what, if anything, may either be identified as some reason for that, and what, if anything, in talking with the City Manager, the police chief, you know, can or will or has been done already in terms of the response of the rise in those numbers?

>> I don't attribute the rise in the courtesy allegations to any one factor. We haven't seen -- I mean, it could be attributed to loot of things. But we don't -- we don't ask the complainant when they contact our office, why is there some reason you're contacting us now other than they just have a complaint. So in terms of the source of the rise in courtesy, I don't know. It would be something different, say, example if

we saw a lot of complaints about 647 (f) arrests. It could be conceivable a spike in complaints. So I don't know the answer to the question .

>> Councilmember Liccardo: In regards, similarly I think with '07, '08, there is a flat-line, there was a marked increase from '06 to '07 both in all three categories, particularly as we look at procedure and force in particular. And so there's -- was any of that attributable to a change in the definition of categories, or the change in their procedure of documenting that may have added to that increase? I don't know, chief, please feel free to add to the discussion.

>> Rob Davis: Sure, I think part of the reasons -- I agree with Shivaun, it is partly anecdotal, in part, if we look at what's happened over the past 12 months, 18 months, there has been a significant outreach by the IPA and the police department, prokif in asking people to come forward if they have these issues, that may have caused an increase. But also when you really take a look at this in context when you consider how many contacts the officers are having and how many formal contacts, nearly 440,000 in a given year, when we see the swing in the report, that is really not one courtesy call a week increase. So when you take into account how many cases we ham, how many officers are out there how many contacts we have, even though these increases we need to be paying attention to we need to take it in context with how low they are to begin with and that may simply mean not more than 1 additional courtesy complaint per week. We noticed to, training et cetera yet also keeping in context.

>> Councilmember Kalra: Certainly I agree that the numbers still are overwhelmingly install. I think whenever you see even a percentage, a noticeable percentage increase it's something at least to look into and as you know as well as any, it just takes one bad experience and all of a sudden that changes the perception that somebody has towards law enforcement. If courtesy or procedure, those are the things that I think that training which I know already occurs can certainly help to resolve, if there is an issue regarding training, regarding a need for continued training, that can have an impact on that, I think that looks like it would be somewhere to also take a look at . Councilmember Liccardo, says this time we're focusing on courtesy and procedure, as some of the cities in the Bay Area even there are a lot of other issues that are going on that are much more serious. But I think we all want to strife for perfection, and so there's opportunities to do that. So one other question in regards to page 10, it discusses in the gray box the CPLE. And at the end of the dialogue, box, YPLE issues in the future . I was wondering if there is going to be more proactive action, one of the things that the director of the CPLE indicated when he was here, the importance was to really have outreach to the entire comownt and to have outreach even to those that in order to prepare a complete report and I think the IPA may be obviously in a position where they may be able to help with that. So do you anticipate any further or any more proactive rather than just falling the CPLE or have they reached out to you or do you anticipate reaching out to them to see if there is something else that can be done in terms of making sure they have a complete view of opinions in the area?

>> Shivaun Nurre: Actually Councilmember Kalra, Dr. Gough will be meeting next Wednesday so I'm hoping that there will be a discussion amongst the members how the IPA was started back discussion to '93 up to the surgeon day, circle of people who are going to be contacted and made aware of CPLE efforts here in the city .

>> Councilmember Kalra: Thank you very much.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. First of all I want to thank your department for all the outreach they're done in our attending community events to make sure that they're getting the word out about what your office does. It's a great resource for our City of San José. But I only have one question. I think that my colleagues have asked a lot of questions that were very important. On page 16, you talk about not receiving notifications in a timely manner on nonmisconduct concerns. And I kind of want to understand that a little bit better, and in relationship to the administration and where we are at right now. Because I know this probably was printed a while back. So I'd like to understand that a little better.

>> Shivaun Nurre: In 2008, matters that were put into the nonmisconduct concern were labeled as such in a shared database president but the IPA didn't have any ability unless it was very time intensive to check every day what had been moved into that classification. And so it was very difficult to check, what was being put into that classification. But I am happy to say that with the help of sergeant Kathy Lopez, we are currently working on a protocol whereas we will get a notification, approximately every week, about those matters that are going to be put in that classification. So that our office then can fro actively look at it and raise any issues we have with that on a timely basis. And that has greatly alleviated my concern over this particular paragraph.

>> Councilmember Campos: Well, thank you, chief, and your staff for the work that they do so that we can actually make sure that we're working to address these issues. Thank you.

>> Mayor Reed: All right, I'm not sure how much of the work we've done here but I know we've got the IPA's report. I don't think we've yet got the administration's response which is item B, 8.1 B, let's take some time to do that for anything you haven't already covered.

>> Rob Davis: Yes, Mr. Mayor, in terms of our response, we have no forel presentation on that. We'll let our report stand. In terms of our PC, I won't make a formal presentation, our report stands I will make a statement that that report outlines the departmentally initiated complaints, these are complaints that we have initiated internally within the department. In the interest of time we'll simply answer any questions you might have .

>> Mayor Reed: Thank you. I had one question regarding the departmental initiated complaints and the IPA complaints that the IPA monitors and that is the actual discipline action taken by the City of San José. I have been told, and I'd just like for the chief of the IPA to verify this, whether it's right or wrong, that we in fact discipline many more officers than other cities our size, more specifically than San Francisco does, and that San Francisco has a big backlog of officer disciplines that have to go through their different kind of a process than we have here. I just need a little verification of this, is it verified or not?

>> Shivaun Nurre: I can verify that the backlog in the San Francisco process is quite concerning . I don't have any comparison with the first part of your question.

>> Mayor Reed: Chief, on the actual discipline numbers comparison with the other city?

>> Rob Davis: It wouldn't be just from people from San Francisco but other major cities around the country. One thing that separates and distinguishes us from those, in our disciplinary process we include the entire chain of command so the communications taking place up and down the change about what the issues were that brought the officer into noncompliance and how it is that we collectively address that, what we need to do inside the department to make sure these things don't happen again. So it's a little bit of a distinction about what we do.

>> Mayor Reed: Thank you. I think it's an important distinction for the public to understand because of the things of the peace officers bill of rights we can't always talk about action that gets taken. We have lots of fine officers that do a great job, 400,000 years -- 400,000 calls for service every year, 35,000 arrests. That's a lot of potentially unhappy customers with 3 to 400 complaints that come through the IPA process. So you know, 99% of the time, our officers are doing a great job. But they're not perfect. And we don't ignore the imperfections, as you can see from this report. We can't tell people exactly what happened on each individual case. We're just not allowed to do that. And the people can have a great deal of confidence that the system we have is work. We do these matters seriously and things happen as a result. That is one of the things to be proud of as a city. We have one of the best police forces in the country and we want to get a little bit better. I think this system helps us do that . I have one question about the new system and the issue of noncomplaints. I know we're only six months into the data collection. But we focus a lot on individual officers and whether or not they did something that was in violation of a departmental policy or the law or whatever. When it's a nonmisconduct complaint, or a spot complaint, I'm not real sure how we watch all of those noncomplaints, for things that maybe indicate that we've got policy that ought to be changed. Because there are certainly substances where the officer has done everything by the book, got all the numbers right, exactly right. But it wasn't a great outcome. Now, if you have one of those every once in a while, that's one thing. But if you have a pattern of those, you might want to look at some of the policies or something the way the department is doing things. If I understand the report Chief, you have your internal people taking a look at that taking the big picture of you not just focusing on the individual officer, is that right?

>> Rob Davis: Correct, there's regular contact with the internal affairs commander and the assistant chief of police, I'd say on a weekly basis, what we're seeing, nonmisconduct complaints where there's been a communication to the supervisor as well as what we call intervention counseling. So they're seeing that at that assistant chief level so we can respond to what we see as either a trend in behavior or a common theme that will indicate that there is a policy or procedure that needs to be looked at.

>> Mayor Reed: And the other issue is whether or not the IPA hears about the misconduct issues before it's too late to change the classification or get engaged whether or not that's going to be timely or not, that's something for you two to work on over the next six months to make sure the IPA is in the loop at the appropriate time so she can look over your shoulder on these classifications. Councilmember Liccardo.

>> Councilmember Liccardo: Thanks, mayor. Chief, I just had one question about page 7 of the internal affairs unit report. As we interpret the data about the different allegations, the categories of allegations, and that chart 2B compares the complete allegations and sustained allegations.

>> Uh-huh.

>> Councilmember Liccardo: If we were would that show up under procedure?

>> Rob Davis: It is my understanding it would. But I will also look to Lieutenant Escovel and/or sergeant Lopez if I'm not giving accurate answers there.

>> Councilmember Liccardo: And I guess my question is, and I don't expect you to just have numbers off the top of your head, is it possible that expensive use of force numbers could be broken out? That is an item we are particularly informed about. Maybe that could inform for us. .

>> Rob Davis: My guess is we probably don't have any DIs that are force or they would have been listed, is that accurate? Initially, if it's a DI departmentally initiated, it would show up in the column. You someone has internally reported a misuse of force.

>> Councilmember Liccardo: Okay so we can assume then --

>> Shivaun Nurre: Councilmember Liccardo, thrsh very rare cases of department initiated cases with force allegations. I think there was one in tbowrp there might have been one other in this span of year you're looking at, so that's very rare.

>> Councilmember Liccardo: So this is just coming from employees?

>> Shivaun Nurre: Yes.

>> Mayor Reed: I have no cards from the public to speak on this item, so we have three reports, three individual items and the recommendation from staff is to accept each of them. We have a motion?

>> Second.

>> Mayor Reed: Motion is to approve the staff recommendation to accept the three reports. All in favor? Opposed? None opposed, the reports are accepted. We have three items to take up jointly, redevelopment agency, and city. Take those and then only one item on the redevelopment agency agenda on the other hand that. So we'll take them now. Agency item 8.1, approval of a loan agreement of an agency employee to the city on a temporary basis. We have a motion by councilmember Oliverio and a second somewhere.

>> Councilmember Chirco: I second.

>> Mayor Reed: Second, okay. All in favor? Opposed, none opposed, that's approved. Item 8.2 is a first amended certificate of nondisturbance and retirement of Cupertino flames LLC. We have a motion to approve. I think I read the subject wrong.

>> Councilmember Liccardo: The numbers here, part of the problem.

>> Mayor Reed: That's part of what we're doing here. The rest is amendment to the lease with flames, three recommendations from the staff on that. Discussion on that councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. Harry, I just had a quick follow-up question from the dialogue I've had or we've had with members of your team. With regard to the \$260,000, am I correct that doesn't cover the entire cost of the electrical relocation and garbage relocation, some of the other physical improvements to the building, is that correct?

>> Councilmember Liccardo, Pete Larko with the agency. The \$2 are 60,000 tenant expense is our share, it is estimated that the tenant will spend and additional \$750,000 to complete that. It also allows us to not have to invest in the future to get access to one of the vacant spaces, probably to the tune of several hundred thousand dollars.

>> Councilmember Liccardo: This is really about investment for the usability of the other spaces as well, both as regard to the garbage as well as the grk.

>> Correct fm it enables the agency in the to invest perhaps another three or \$400,000 in improvements.

>> Councilmember Liccardo: Thanks Pete. The share revenue we may be able to attain once the flames exceeds \$5 million in annual ruive, is that something we anticipate to have happen relative soon?

>> We've had encouraging, one to two years, relatively fast, with regard to other straints going on downtown with percentage rent clauses.

>> Councilmember Liccardo: Thanks, Pete. i'm obviously enthusiastically supporting.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: I'm not surprised that is coming through, nice people and all the rest so I would imagine wedding reception and sort so forth .

>> Harry Mavrogenes: There are a lot of pluses to this and we heartily support it.

>> Councilmember Pyle: We will be coming down and hopefully enjoying those as well, thank you .

>> Mayor Reed: I have a question for other prospective tenants for this space. I don't know if we had another deal with another tenant but there are other tenants that looked at it. How does that comparison of \$250,000 for shell improvements have? This works out to be \$44 a foot. The Lee's dewas \$66 a foot. The McCormick and smik was admonish.

>> Mayor Reed: If we have to use this speos we do have some requirements to get it there. I think the other important authentic is this will help us with the other space in the buildings, which we would also like to get into a rent-paying tenant. And this will save us money on that transaction. There are several reasons to do this. City Attorney has a comment.

>> City Attorney Doyle: Yes, Mr. Mayor. I don't know if it's been noted, but there is an items, 8.2C which contemplates approval of noncompliance. That has not been read yet. We would like the city clerk have annal opportunity to do that, so make sure that's on the public record.

>> Mayor Reed: We have a motion to approve the recommendations. All in favor, opposed, none opposed. Those are approved. Item 8 many 3, the joint item, that's approval of the second reading of the chack development, San Juan Bautista. all in favor, opposed none opposed, that's approved. All right, that completes the agency joint items. So all the city staff that were here for those items, now we're going to go to the agency board part of this meet which is not much. The first item just agency-wise is the consent calendar. Is there anything on the consent calendar that the board wants to pull for discussion? Motion is to approve the consent calendar. All in favor? Opposed, none opposed, that's proosked. Item 6.1, that's an approval of an increase of the project contingency budget for the demolition of two city-owned buildings adjacent to Parkside hall located at 180 Park Avenue. Motion is to approve, all in favor, opposed, none opposed, that's approved. I believe that completes the redevelopment agency agenda, and the afternoon agenda for the city council. I have no cards for open forum so we will adjourn until 7:00 p.m. We'll take up the evening agenda.

>> Mayor Reed: We call today's city council meeting back in the session. This is the third session of the day. We started earlier this -- morning. We are left with a few items on the agenda. We'll start with a ceremonial item and then we'll hear the Donna Lane and Bradford Way coalition implementation plan and then we'll do the land use items. Swearing in of the youth commissioners, invite Councilmember Kalra, Chu, Nguyen and youth commissioners, Kavya Shankar, Kasey Ong and Amanda Aldama join me at the podium for their oaths of office. We're going the get all organized and then we're going to have to wait for the City Clerk. We got started a little bit early. Let me talk a little bit about you're youth commission. Each of these young people will be representing a council district on the city youth commission. We appoint them, and then they go off to go -- they learn things and go off to do great things elsewhere in the community, a lot of them get startled go off to college or start off in college and go off to other things. But it's an advisory group that is formed along with other bods and commissions to give advice to the city council on certain kinds of matters. Youth commission talks about matters of importance to the young people of our city. And they often undertake projects as a commission in order to do some things. They've done over the years some great outreach, getting youth together across the city to talk about problems and issues affecting our youth. And so we're always happy to see them. And we do this swearing-in as they rotate, which they do, because they have lives and they have to move on to college and jobs, sometimes, after they sort of mature out of the youth commission. So we're happy to do that. I'm sure the City Clerk will be here any minute. In the meantime we'll have a chance to talk to these. So don't mind our backs, please. Okay. I think we're just about ready to start, as soon as the clerk grabs the oath of office. I know she's got it memorized but we usually let her use a script.

>> Lee Price: My apologizes to all of you. Raise your right hand and repeat after me. I --

>> All: [Repeating]

>> Lee Price: -- do solely swear --

>> All: [Repeating]

>> Lee Price: -- that I will support and defend --

>> All: [Repeating]

>> Lee Price: -- the constitution of the United States --

>> All: [Repeating]

>> Lee Price: -- and the constitution of the State of California --

>> All: [Repeating]

>> Lee Price: -- against all enemies, foreign and domestic --

>> All: [Repeating]

>> Lee Price: -- and that I will bear true faith and allegiance --

>> All: [Repeating]
>> Lee Price: -- to the constitution of the United States --
>> All: [Repeating]
>> Lee Price: -- and the constitution of the State of California.
>> All: [Repeating]
>> Lee Price: I take this obligation freely --
>> All: [Repeating]
>> Lee Price: -- without any mental reservation --
>> All: [Repeating]
>> Lee Price: -- or purpose of evasion --
>> Lee Price: -- and I will well and faithfully discharge --
>> All: [Repeating]
>> Lee Price: -- the duties for which I'm about to take.
>> All: [Repeating]
>> Lee Price: Well done! [applause]
>> Mayor Reed: We'll now take up item 4.2, the Donna Lane and Bradford Way coalition implementation plan. I assume there will be a staff presentation. And we have a presentation from some community members, is that the way we'll do this?
>> Norberto Duenas: That's correct, Mr. Mayor. Members of the council, Norberto Duenas, Deputy City Manager. I'm going to pass it over to Ernest Guzman who will provide you an overview and a context for this item, and then members of the community are here to say a few words about the project.
>> Ernest Guzman: Mayor Reed, honorable council members, Ernest Guzman, Neighborhood Development Center, City Manager's office. This is the last of the strong neighborhoods initiative pilot projects. In 2006, the city council approved expanding the methodology of the SNIs model into three neighborhoods outside the original redevelopment area. The Seven Trees neighborhood area in council district 7, the Silver Leaf neighborhood area in council district 2, and the Camden-Hillsdale neighborhood area of district 9, which is the one plan you have in front of you this evening. The SNI model allows neighborhood residents to be involved firsthand in shaping and achieving a shared vision for their neighborhood. This community-driven methodology fosters residents who are personally invested in a shared vision for their community. Neighbors get to know each other better, work directly with the city departments serving their community, and enter a new level of active civic engagement. In the case of the Donna Lane and Bradford Way neighborhood, this has resulted in the emergence of a group of residents with a tradition of little or no voice in neighborhood issues now working to develop and maintain a vibrant partnership with the city. One of the hallmarks of the pilot projects has been the expectation that each of the pilot areas will form a unique partnership and coalition, where there traditionally have not been neighborhood groups. With this last pilot project we have accomplished the formation in this area of at least three neighborhood groups encompassing property owners, tenants and homeowners, as well as the formation of the overall coalition that will move an agenda forward that is fairly unique to their own community. In your plan, you see some of the actions that they have chosen to take on through numerous meetings among themselves and with city departments. For instance, they are looking to provide neighborhood cleanups throughout the neighborhoods. They want to assist and coordinate exterior improvements for the Donna lane and Bradford way neighborhoods. Last week, National Night Out, a neighborhood meeting to prepare for this evening's presentation. It was remarkable experience from a year before when there was no organized group of people that traditionally had not been at the table. But not only that, we were privileged and honored to have the mayor there had a evening, to have the City Manager there, to have the Chief of Police and other city officials. With the mayor showing attention to a group of individuals with that traditionally has not had that sort of access to city officials was remarkable in itself. However, it was just as remarkable to see the City Manager and the Chief of Police not giving speeches, but rather, talking individually among the neighborhood leaders. This is the kind of engagement that the pilot projects were created for, and we are glad to see that they have fostered that kind of partnership between the city and its residents. Among the different kinds of activities that we've managed to train this group of citizens to do, of residents to do, is to actually go ahead and talk to their elected officials. Not just the vice mayor's office which is, this is her district, but rather to engage as part of a process to individually visit each of your offices. And to lay reasons why you should support their top-ten priority lists. This, from folks that have not had a voice in terms of talking among themselves, but actually gathering the courage to be able to involve themselves in a civic engagement process that most

of our residents have yet to take up. So I want to emphasize that, with this particular project, the partnership is really, as the Vice Mayor said, not so much up to the city to be able to define what the parameters are of their priorities, but rather, for the citizens and residents themselves, to be able to drive their own continued improvement in their neighborhood. That is a powerful statement that is really something that these citizens that are sitting out in the audience have taken to heart. You've seen a lot of the SNI plans come forward. You're familiar with the top 10 lists. You've had the plan and had a chance to look at it. Rather than going into a lengthy discussion about the parameters of what's in the plan, I'm going to go ahead and open it up to any specific questions that you may have. And then, certainly, you'll be able to hear from the citizens, from the residents, as to what they think of the plan.

>> Mayor Reed: My guess that council would like to hear from the residents before we discuss its. Would that be accurate, Vice Mayor Chirco?

>> Councilmember Chirco: Absolutely.

>> Mayor Reed: Why don't we hear from the pool who worked on this plan. Come on down. Just come on down in order.

>> And thank you city council. We appreciate your seeing us this evening. First, I'd like to say my name is Neil De Giacomo. I'm representing the Butcher Park neighborhood association. And as you can see, we're pretty much the area between Hillsdale and Hallmark, Ross and Manda. And we've got residents' participation in here. One of the things that brought us here tonight is like while national and state crime statistics are going down, San José appears to be trending upwards, which is one of the things we'd like to try to prevent. And we think that by being a stronger neighborhood, we would have the ability to prevent crime, rather than just react to it. This is our neighborhood now. And as you can see, it's a pretty nice neighborhood and we'd like to keep it that way, so that's why we're here tonight. Some of the things we'd like to accomplish, maybe some additional street lights, some curb cutouts for handicapped and children, maybe neighborhood -- performing a neighborhood watch and getting the city's backing behind that, additional crosswalks and traffic calming. So that's about all I have. And I'll pass it on to Hank. So thank you very much, everyone. [applause]

>> How you guys doing? Thank you for having me here today. My name is Henry Guerrero, and I'm representing the portion of this coalition that is known as the Donna Bradford tenants union, which is the part of the coalition that's the apartments. And because of the situation that's going on, we need -- we'd like to implement this plan to support more security, like Neil said. And we have not as -- as the housing area, but the apartment area, there's -- at one time there can be 104 different families in a half-mile square block. So we also need added security. Our driveway has never been done. It's getting older than I am. So you know, these kind of situations is what we need help with. And we need added lighting, like Neil said. And just some improvements that we can -- you guys can support us with and in here. And I'm just here to support and represent them all. Thank you. [applause]

>> It's an honor and a privilege to be here. Mayor, and all city council. Hi, my name is Denise Frasier, and I'm representing Donna Bradford community, and I also support this plan for the improvements and all the repairs. As I've been at my apartment for, like, nine years now, I also want to say that I support a drug-free community. I've been clean and sober now here, in San José, for nine years. And I have come out of my addiction and started getting involved in community things like this. And it's something that, you know, it's an honor for me to do. I went into a residential program and that was Mariposa, and it was the best residential program that I've ever been in. So I just want to thank San José for that. Thank you.

>> Buenos tardes [Spanish]

>> (translated) Good evening. My name is Elsa Villacannios. I've lived in the area of Donna for six years. I would like to ask for your vote in order to support the change that we've been asking for for a long time. The first point is let policemen visit in the area, especially more in our area. Because some people steal our cars. More safety for our families. Illumination in our side streets. For the side of our houses. And we want to give you thanks in the name of everybody for listening to us. Thank you. [applause]

>> Good evening. Thank you, mayor, thank you, Vice Mayor, the council in general. My name is Raphael Sanchez. I belong to the Donna Bradford property owners association. I am here to say that our newly formed owners group supports this neighborhood plan. I ask you to vote and to accept this plan for the following reasons. It's going to help prioritize city services and align them with the needs of the Campbell area. Specifically our area is one block with two rows of apartments, and there are 24 parcels with one four-plex on each parcel. And it's divided and the two sections got an alley that is common to the two lines. But now each owner is doing sort of their own thing. We want to create relationships among owners

and towards the understanding of common management practices and work towards common improvement of the area. And we know that in other areas of the city, apartment owners have been very successful in forming owners' associations and the success of these groups has only occurred with the help of the city council. When owners work together, we can improve neighborhood safety, and improve living conditions, for all. That makes a winning situation for everybody. The owners win, the tenants win and of course, the city would win because the resources if the neighborhood is bad, those resources are not needed. Additionally, provide hope in the future for us when the economic turns around, and we can -- we going to be able to make the case for new and innovative housing apartment programming in a place where we have rent control. Finally, I want to tell you a little bit about me. I'm a foreign born United States citizen. I came to the United States as a young man and I'm an example of the American dream. And I urge you to vote for this plan. Thank you very much. [applause]

>> Well, I come from Donna and Bradford way, I'm not a very good speaker, but I think everybody that's here from Donna Lane -- [applause]

>> Judy, we work, we walked the streets on Donna and Bradford Way. I was given this award. And I was so pleased to sever it. But as you can see, our lighting and our potholes and our dumpsters and our -- nothing has been done. I plead with you, to help us to get this done. If we let it keep going and keep going, we're going to be right back to renting to people that don't care. Because that's the way they live. And we want to better ourselves. And all we have is Donna and Bradford Way to live. Please help us. We need these things fixed. I ask of you. Thank you. [applause]

>> Hi, I'm Barbara Silva, and I'm one of the owners of Donna Lane property. I came here because I wanted to ask for your support. As an owner, I've been doing what I can as an individual owner to maintain the property the last several years, do some improvements, and make it a nice place to live for my tenants. And that's always important to me. I don't live in the area, but I do spend a fair amount of time coming down here, maintaining it, making sure things are nice, the gardens are maintained, the courtyard maintained, and I really care about the building. So I want your support, as you can see by the group that's come here, they're very interested in making improvements. We've recently formed a homeowners association and have been meeting and talking about things that we can do jointly. But we need the city's support. We don't always have the financial means, so we look for your support to help us with this project. Thank you. [applause]

>> Mayor Reed: Thank you. I had more cards than I had speakers. So if there was somebody else who put in a card who wishes to speak, now is the time on this item. We've got plenty of other items later. Okay. There's at least one more person. Thank you. Well, I think that concludes the public part of the testimony on this. We'll bring it back for some council discussion. But first I just want you to say, thank you for inviting me to the National Night Out. I see a lot of people here that were out there trying to create an organization to help improve their neighborhood. And we can't do it by ourselves. You can't do it by yourselves. But together, we know that we can make a difference in our neighborhoods because we've done it before and am looking forward to working with this neighborhood and this organization to improve this particular area. Staff's done a good job in getting this organized, and I want to congratulate the vice mayor on getting this to us. I know it's been a challenging area to your district for a long time. With that we'll turn it over to the Vice Mayor.

>> Councilmember Chirco: Well, I will apologize for having what appears to be a script but I am so excited I didn't want to miss a point! This is a moment of great pride and celebration. The Donna Lane and Bradford Way neighborhood improvement plan has been several years in the making. I recall our first meeting out in the apartments. And I see faces I haven't seen in a while. Because they've gotten hope again. And people like Irene who have been there from day one. I know my husband and I participated in the door-knocking, and we were welcomed into homes, and the trouble leaving, because they became friends. We knocked on doors, where people didn't believe change was possible. But we kept talking. And through the talking, I see what has happened in the neighborhood. I'm proud to be part of this neighborhood. I would like to address the residents that are here tonight and talk about the dedication that I have seen from our community. Famed anthropologist Margaret Mead is cited in your neighborhood improvement plan. Have no doubt that a small group of committed people can change the world. Indeed, it is the only thing that has ever changed the world. It's a well-used and well-worn saying. But it still has all the shine of a diamond. You are a shiny example of that small group but you are all agents of big change. I have shared with you my past experience as a member of PACT and how afraid I was the first time I spoke in front of a large group of people. So to Neil and Raphael and Hank, Denise, Irene, I'm proud of you, you didn't have a heart attack. I thought I was going to have one the first

time I spoke in front of a group. You are the inventers and creators of this neighborhood improvement plan. Your passion and excitement are contagious. And I love it! Thank you so much for giving of your most valuable asset, your faith. Belief in this process, trust in that coming together, you can find common goals as neighbors and working together as one community, you could achieve those goals. And your time. The many evenings spent at meetings, and the Sundays and Saturdays spent knocking on doors. They've made the difference. Please remember this feeling. Because the work will be long, and it will be hard. But remember this moment. The pride and the enthusiasm you have tonight, and you deserve every moment of it. Let it carry you through the work that lies ahead. The task at hand now is to turn this vision into a cleaner, safer, more organized community that you have into your and our reality. You've made great strides, formed valuable partnerships, and have all the natural talent necessary to achieve your goals. Now, I'm going to take a little time to thank a few people, and most of all I'm proud of the new organizations that currently exist in this neighborhood. The Butcher Park Neighborhood Association, score! The Donna Lane Property Owners Association, my hat is off to you. I remember one property other than, and we had two come to speak at this meeting. I thank both of you. The Donna Lane tenants union, doubly proud of you. The Donna Bradford coalition homeowners and apartment property owners and apartment dwellers, coming together to make a difference in their community. What can San José be more proud of than people like you? We have some city partners I'd like to stay a couple of moments to thank. City Manager's office, code enforcement, Department of Transportation, fire, housing, library, police, the special support of the Department of Parks, Recreation and Neighborhood Services, and specifically the hard work of Soshi Montiz and Eric Larsen. These are the people that give us the skills to make the difference. Now, that is a longer speech than I usually make but the occasion calls for it. But at this point I'd like to make a motion, and that is to accept the Donna Lane and Bradford Way Neighborhood Improvement Plan.

>> Councilmember Pyle: Second.

>> Mayor Reed: All right, we have a motion and second to accept the plan. Any further discussion or questions from the council? All in favor of accepting the plan? [ayes]

>> Mayor Reed: Opposed? No one's opposed. The plan is accepted. Congratulations! [applause]

>> Mayor Reed: Thank you very much. We appreciate everybody who came out tonight to participate in this. I know there are many more people here than the ones that spoke and a lot of people are engaged, it's really great to see you out here. And one of the things that you should know about these council meetings. After you're done, it's okay to leave. Because sometimes we go on for hours and hours and hours. So it's not rude to get up and leave when your item is done but you're welcome to stay. We won't be here for hours tonight, I don't think, but we do have other work to do. That concludes that item and we'll now take up the land use matters. First is the consent calendar for land use. Are there any items on that calendar the council wishes to take off for discussion? We have a motion to approve the consent calendar and a second. Councilmember Constant had the motion. All in favor? [ayes]

>> Mayor Reed: Opposed? None opposed, Councilmember Campos had the second. Item 11.2, our consent calendar is approved. 11.2 is rezoning of real property at the Northwest corner of east San Fernando street Street and south 34th Street. Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. I'm not sure if we have some speakers on this but I'd like to put a motion so the people can speak to the motion. I'd like to ask my colleagues to support staff's recommendation along with the Planning Commission's recommendation.

>> Second.

>> Mayor Reed: Okay, we have a motion to approve the staff recommendation and Planning Commission recommendation. I do have some people who wish to speak on this item, I'll take that testimony at this time. If you want to speak fill out a yellow card. I'll call out some names. Come to the microphone so you're close to the phone when it's your turn. Megan Williams, Nam Lam, Thomas Maxie. Please come on down. Yes, go ahead.

>> Good evening, Mr. Mayor, and councilmembers, my name is Megan Nguyen. I'm one of many Buddhist member of An Loc temple. The headman of the An Loc temple is very compassionate person and her object to bring happiness to the people who come to the temple. I would like to share with you some of the actions and benefits have been done. She opened the Vietnamese languages class on Saturday. She opens the door to the Vietnamese Buddhist youth, to hold regularly at a meeting on temple on Sunday. She organizes spiritual retreat services for all she will buy seafood for the homeless and for the neighborhood, during the special holiday an. She vietnamese community at oak hill cemetery. She hold gathering with the neighborhood for benefits to everyone from retaining the culture stress release

and job opportunities with all that said, I'm sincerely request your understanding and approve the An Lac temple renovation plan and allow to continue doing the right things she has been doing in the past. And indirectly you have contributed to all the good outcome the temple will bring forth in the future. Thank you.

>> Mayor Reed: Thank you. Nam Lam followed by Thomas Maxie.

>> Good evening, ladies and gentlemen. When I think you have -- you have the copy of the announcement that we mail out to the members. I'd like to express our sincere thanks to all the councilmembers for your support. And one of the Vietnamese Buddhist youth liters and I am in charge of the security planning and execution for On Lac temple. I'd like to share with you the plan we is have in place and house we manage the parking situation. We have a group of ten people that divided into three groups that manage first guide in traffic flow and flow to the Mexican heritage parking lot, second, managing schedules and drivers to and from the park lot. Third, keeping overall security at the temple and walking the street to inform visitors about the parking policy. We have enough that we post to our visitors regarding park policy. We have parking we set aside to the temple during the week events and we have a sign about parking at the Mexican heritage plaza. We recognize that we have had a few incidents in the past and we apologize for any inconvenience that we have caused. I am continuously review our security plan and lesson learn so we can improve the process. Sincerely, thank you. [applause]

>> Mayor Reed: Thomas Maxie then Dr. Sakya Lan Han Tre and Elizabeth Sac Han Vo.

>> I moved in in 1974 and I worked at Lockheed Martin. And when the temple moved in, it was a great improvement into the area, and they have never really caused anybody any problems. As a matter of fact they solved more problems than they caused. And I think you should approve of the -- what they're trying to do.

>> Mayor Reed: Dr. Sakya Yak hung Tre. Ta Vi Nguyen.

>> Good evening, honorable mayor and city council members. My name is Sakya Han Tre. I'm a member of An Lac temple, actually I'm a student and she's my teacher. I'm here to speak about my teacher and share to you her feelings. Honorable Ann, she especially wants to thank the staff. For all their hard work in guiding her through these complicated permit process. Venerable Nguyen Tang has been part of the neighborhood since 1994. In her 15 years, she has grown to appreciate all of her neighbors, that have been more than understanding and compassionate in allowing her An Lac temple to become a part of community. During that time, she has made many neighborhood friends, and assisted many families to survive hardship, overcome life, pain and suffering, and tried to make them happy and restore their lives. And be she guides and we all guide them in seeking inner peace by teaching spiritual through the members, and how to achieve enlightenment in this very life. She wants to continue this work for many more years. In order to serve the Buddhists and the community. As far as our neighbors, her work could not be accomplished without the help from all the neighbors and the community. Venerable --

>> Mayor Reed: I'm going to have to ask you to stop.

>> Okay.

>> Mayor Reed: Used up all your time.

>> I would like to say something. We are here to pray, may all living beings be safe, happy and peaceful. We are not destructive people. We bring peace to the neighbors.

>> Mayor Reed: Thank you. Elizabeth Dic Binh.

>> Thank you very much.

>> Mayor Reed: Elizabeth Bic Lin Vo and Ta Vu Nguyen.

>> Good evening, mayor and councilmembers tonight. My name is Elizabeth Dic Binh Vo. I'm asking for the An Lac temple. Beside work inviting for life we need the place, we need the spirits to pray for our lives, to have us happy and stable life here. So please, somehow, some way, you have the projects go to, to help our Vietnamese people have a peaceful life and we have a happy life. We know here is second country for us. So please have An Lac temple to fill up the projects. Thank you very much. [applause]

>> Mayor Reed: And our last speaker is Te Vu Nguyen.

>> Good evening, mayor, council. I ask for your open heart to support the An Lac temple. One of the reasons why is because we need a healthy environment, a safe place for our children, our community. An Lac temple is the place the people come to seek the harmony, the peace and the spiritual. An Lac is also the place for the children to get nourished with the cultures and also to get educate so that they can become a good citizen for our city. And we need An Lac because An Lac is a great place, a safe and healthy place, because with An Lac the community can improve. You know, because the location that provide a great opportunity, seeing as much as is going down, not a lot of program out there. An Lac

willing to offer those program to help their resident. And people concerned about parking, when big event, they contract with Mexican heritage for parking. So those issue have been solved. Basically they're working with Mexican heritage like Vu Lan coming up, they making sure that people there attend comply, they respect the neighborhood by parking outside so that the neighborhood can use the parking lot so that is another point that I like to address for the council to considers, An Lac as a great place. So please open your heart to help them out. Thank you. [applause]

>> Mayor Reed: That concludes public testimony. We do have a motion to approve on the floor made by Councilmember Campos. Councilmember Nguyen.

>> Councilmember Nguyen: Thank you. I just wanted to say that I will happily support the motion. I think one of the most wonderful things about the City of San José is that we recognize and respect all religions and it seems to me that from the memos, from staff memo seems like the noise mitigation and the parking concerns have been resolved. It's great to hear that the An Lac temple has been working with the Mexican heritage plaza to mitigate some of the concerns as well. The renovation of this temple will allow them to practice their important commission but at the same time we are assuring the faith community that we care and want to continue this partnership. Thank you to all the people who came to speak tonight and I urge my colleagues to also support Councilmember Campos' motion. Thank you.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you. First of all, thank you for coming out. It is always good to hear why people are passionate about a certain project. And I think it's an opportunity to share with the council your passion and your reasoning for wanting this project to move forward. But Joe, I just wanted to ask you, one question. Currently, right now, we know that there is a solid agreement with the Mexican heritage plaza for the parking, and we know that we're going through a transition period right now. And we don't know who the new operator will be at this time. But for right now, it's the city. So I'm wondering, is there any language that we can put in a motion to encourage a new operator to have dialogue with the temple, if it were to switch hands, or do I just have to encourage someone to have that dialogue, so that the partnership can continue?

>> Joe Horwedel: Councilmember Campos, normally, when we do an offsite parking agreement, we do report it against the adjoining property. My understanding is, this is more of an informal agreement of how the park is provided. So I think that it is a good reminder to the staff that as we go through and work on long term use and operation of the plaza, that we think about how it supports other uses in the neighborhood such as this. So I'll go back and look to see if we have anything that's memorialized. I don't think we have a formal agreement. Ideally, that's what we'd like to do but absent coming into a major redevelopment, which there was some proposals to take out the park and put in structured parking and thing like that. I think we're okay with the time being, anything further with the garden such as housing or we could have the discussion at that point.

>> Councilmember Campos: Thank you. The reason I brought that up, we know that any revenue they can get and they've been a great partner and also the city is receiving some revenue from the relationship, it just helps us to be a good neighbor a city to the organization and the community, I appreciate that with that I ask my colleagues to support the motion.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. First I want to thank all of the people here to speak for support of the temple. And many of the people that called my office, or met me there, I don't think any of you are lobbyists, so I don't have to redo the long list of people that called the office or talked to me in person. As a Chinese American who grew up in the Buddhist family I'd be really looking forward to the grand opening of this temple so thank you very much. Thank you, Councilmember Campos, for your motion.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: I'm happy to support the motion. I'd just like to commend the An Lac tell emcommunity for their creativity in addressing the community answer concern about parking in planning space for our growing religious communities. I'm glad to see we're able to find a successful result in this case. And I hope we're able to continue to employ that kind of creativity in the future. So congratulations and thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I also want to thank you for coming out today. As for your comments, many of your comments truly reflect your faith and living in peace and harmony. I feel -- I just feel really good after hearing some of the comments you made. Some of my colleagues said, the way

you've worked with the community also exemplifies your faith. Although I lived in a Hindu family, I respect the Buddhist religion and look forward to visiting when it's complete.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you for Councilmember Campos for bringing it forward and I too happen to be in a minority religion, Jewish in this community. When you are of a religion that is not of the majority it gives you a unique appreciation of that. I look forward to coming to your grand opening.

>> Mayor Reed: Thank you. I'll be supporting the motion. I want to thank the temple for the work it's done in our community to reach the people that are in great need of assistance. And the good work that you've done. And I'm looking forward to seeing that continue for many more years as you undergo this renovation. With that, I think that concludes the discussion. We have a motion to approve. All in favor. Opposed. None opposed. That's approved. Congratulations. [applause]

>> Mayor Reed: We will now take up item 11.4, it's rezoning of property located in the Northeast side of San Felipe road. Want to disclose in preparation for this meeting my staff has met or just talked with Mark Lazzarini and Tony Ariola. Councilmember Herrera this is in your district.

>> Councilmember Herrera: I would like to put a motion on the floor and have the speakers come. At this time, I'd like to make a motion to approve the rezoning of real property located on Northeast side of San Felipe road as recommended and approved by the Planning Commission.

>> Mayor Reed: Okay. We have a motion to approve. Take some public testimony at this time. Mark Lazzarini, Bonnie Mace and Michael Mace.

>> Joe Horwedel: Before they come down staff had comments.

>> Mayor Reed: Get staff comments.

>> Joe Horwedel: Staff did recommend a different street configuration for this subdivision. The issue of street configuration is certainly not one of major traffic circulation in this ends of San José. It is on the edge of the city, so either street alignment will meet traffic safety concerns. Staff does have a larger concern in the city about street connectivity. That as we go forward and build out the city, the issues that you will hear tonight from the neighborhood are the issues that we face across the city. And in this case, it is a very I think the consequences are minor for going with the applicant's plan but staff is concerned on a citywide basis that the growing street connectivity of our network, is going much finer grain of circulation and it is something that we will run into these kinds of challenges along the way. Thank you. All right. Mark Lazzarini.

>> Good evening, mayor and councilmembers, Vice Mayor Chirco, it's good to see new that chair. Anyway, I want to first thank the council for your actions in December to update the Evergreen plan policies. If it weren't for your action, we wouldn't be here. We ask that you approve the site plan as the Planning Commission recommended. We have been planning the site development in the neighbors' backyards, literally in their backyards for some time now. The neighbors have really taken ownership of this plan even though we own the property. But be that as it may, our site plan builds on previous council approvals and directions and emphasizes bicycle and pedestrian connectivity and it strives to maintain the rural feel and character of this community. The site planning effort with our neighbors and with the help of staff went to great length to saving trees along San Felipe, restore riparian areas with generous setbacks can lot sizing between homes consistent with the neighborhood pattern, development of trails, and the streets, and the trails in combination really serve as valuable recreational aspects for these residents. One problem had to do with an abandoned access road I bring this up because while this road was long and straight it took a long and winding process that led to the planners door to best incorporate them into our plans. I want to thank the city attorney's office for their help in that effort. I'd like to thank planning, Public Works and D.O.T. staff for their effort to get us to this point. And we enjoyed a good working relationship and mutual respect. And I'd like to thank the city for their efforts in work through the issues as they came forth oops but on behalf of all the members of DAL properties, we appreciate your coming forwards also perhaps provide a little is directions to staff on a couple of other issues, recommendations that the Planning Commission had, having to do with trees and adjustments to riparian. So nothing significant but I think would be good direction to have. Anyway, we are also hoping to have a housing market to build to. Soon, in the near future. So if you could put that on the future agenda, and another resolution, that would be helpful. Thank you very much. Now I'll be available for any questions should you have any.

>> Mayor Reed: All right, that was the applicant or the applicant's representative, I guess. Bonnie Mace and Michael Mace.

>> I'll be brief as usual. My name is Bonnie Mace and I represent the 15 or so homeowners on the meadow lands side. The Calo side. No more than 35 homes on the entire parcel per our December 2006 memorandum of understanding. We understand that this is a political memorandum of understanding but we hope that you will continue with this. We also want to point out, we understand some of you were a little bit concerned about density. I know Councilmember Liccardo talked a little bit about five when he was doing the general plan dissention change. We want to point out this is not five per acre. This is actually a blend density of two and a half per acre. If you look at the entire parcel, two parts of it it is a lot smaller than it looks in the general plan designation. Our recommendation is no direct vehicle access from grand oak to San Felipe due to speeding concerns connectivity our feeling is this is a semi rierl area and we want bicycle and pedestrians, we don't want a drag strip going through the area so that is what we support. Everything from the blue line up would be a shortcut if we did staff's proposal which is the red line coming across this way. It is a little hard to understand but currently Cal oak creek accommodation out the bottom and heads this way to north. With staff's help it would be basically a drag strip going across the pasture land dragging 100 homes through there. What we're concerned about is it will change the traffic flows and be very bad for riparian areas, across the bridge that they're going to build so what we are supporting is the developer's proposal which has the lowest traffic impact on Cal oak creek. Actually it's ironic. The very people who would want the direct cut through on Cal oak creet, don't want it. Actually, they nt rks dead end like it's always been. So this is actually something they're willing to do but they want just the cul-de-sac and the rest going out San Felipe coming out this way and the little blue part is the bicycle access and pedestrian. Here is the rert from Cal oak creek. You can reads it. We thank you so much for listening to us for the past three years. Hopefully this is the last time you'll hear from us. Thank you very much.

>> Mayor Reed: Michael Mace.

>> Thank you very much. I live adjoining to these properties. Staff is going to tell you that 20 years ago when they started thinking about this property, however they never told us about that. And in the meantime things have changed. You've got a whole neighborhood that grew up with people with young kids who play in the streets because it's low traffic. To totally change that traffic flow now would be a big disruption to the existing neighborhood. There isn't any village that's going to be built out here. We're right up against the green line. There maybe three or four houses that will come in eventually and there's not going to be a big change. The neighborhood doesn't want a big change to the neighborhood. The staff can tell you they can make it circuitous. They'll tell you they need a through road to protect riparian. But that's a dumping problems but it's a separate issue that's not linked. Biggest thing I want you to understand is that existing road that Mark mentioned earlier, that driveway that's there today is going to be improved for use by pedestrians, motorcycles and vehicles. Regardless of wish of these choice you make. In other words, there's going tube bicycle and pedestrian connection for sure the only question is are we also going to have a road with a bunch of people driving through it? We feel for the character of the neighborhood it's better to have a bicycle and pedestrian connection. So we looked at a lot of the City's policies on things like avoiding flag lots, encouraging bicycle use, protecting personal safety by making it harder for pes developer's proposal does a better job of keeping compliance with city city policies than staff's proposal does. Thank you very much for your time.

>> Mayor Reed: Thank you. That concludes the public testimony on this item. Councilmember Herrera, did you want to speak to the motion?

>> Councilmember Herrera: Yes, thank you, mayor. Well, first I want to thank the folks that came to testify today from the community and the development side, and I want to thank Joe Horwedel and his staff for all of the work on this. The project's really impressed me because of the level of working together in the community. It's brought community associations together, working with the developer, and they've been working on this for some time. And I just really appreciate all the effort and the thoughtfulness of these presentations today on the item. I do have a motion, but I wanted to add a couple of things to the motion if my seconder would agree with that and that is also to direct staff to address the Planning Commission's other recommendations regarding the riparian setback on lot 26 and the two trees of heaven removal to the PD permit stage. If we can direct staff to look at that.

>> Mayor Reed: Let me just check on the seconder, it is okay, all right.

>> Councilmember Herrera: So I feel that the Planning Commission recommendation preserves the rural character of this neighborhood and as has already been said, connectivity is an issue but I think to the pedestrian and the bicycle connectivity as well as the emergency access connective is there. So it's just a case of we're not going to provide a through-way for cars to you know to come out onto San

Felipe. Which I think the real concern there is that is going to create some real problems for the neighborhood in terms of increased traffic and problems. So I hope that my colleagues will support me in voting yes on this motion.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Mayor, I just wanted to disclose that my staff person is Tony Ariola .

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: I think I should make a recommendation to Mark Lazzarini. I think you should hire the Maces, because that's the best PowerPoint presentation on a development .

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: I had a conversation with Mark Lazzarini.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I wanted to commend the community members who were active in this project and Mr. Lazzarini and the developers, because obviously this is something that's been going on for some time and it looks like we're going to ends one a good projects. That's a good area that we have there. And one thick I spoke with Mark Lazzarini earlier today on the phone and one thing briefly brought up and been brought up again today is really a unique opportunity to create a great pedestrian-bicycle community here. Not just for the development that's being built but really for the surrounding neighborhoods as well to take advantage of. So I think it's going to be a good project for the community, and I also agree with not having those cut-throughs and rather keeping the more pedestrian friendly neighborhood feel to it.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you. I have a similar situation coming up so I'm taking notes on this one. And I also want to disclose that my chief of staff met with Mark Lazzarini.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. I talked to Mark on the phone yesterday.

>> Mayor Reed: Councilmember Herrera again.

>> Councilmember Herrera: I met with Mark Lazzarini and Bonnie Mace and Kathleen Helsing of call oak and Bonnie of meadowlands oop.

>> Mayor Reed: I think that concludes council discussion. We have a motion made by Councilmember Herrera. All in favor, opposed, that's approved. Item 11.5 is our next item, that is the interim ordinance establishing a temporary moratorium on new bail bonds establishments. I think Joe Horwedel will start this one off.

>> Joe Horwedel: Thank you, Mr. Mayor. Before the council tonight is a temporary moratorium on additional bail bond businesses opening in the city. This was initiated at the request of the council. The staff is working on a long term moratorium and that is scheduled to come forward to the council. I think it's in three weeks. Staff is looking at some of the issues that were raised at the Planning Commission meeting regarding relocation options or opportunities of existing businesses should they lose their lease during the time that the moratorium is in place and that's a discussion that City Attorney and I will be pursuing so that when we come back with the permanent or the long term moratorium that's information we can share with the council how to pursue that.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. Joe, thanks for all your hard work. I know that it's consumed an awful lot of your staff's time and I appreciate that. I just wanted to clarify. My impression of, on page 3 of the draft, that's attachment 4, you skip down to section 2, it would -- I may have misread this. But I was under the impression this already allows bail bonds businesses that are currently in existence to be able to apply to the city for permits to modify their businesses, and that would enable them to move if they need to move, and they're already in existence. And I wrong?

>> Joe Horwedel: Councilmember Liccardo, the legal nonconforming status, which is what we were dealing with in section 2, relates to a location, and not to a business itself. So in the same way that a business that sells off-sale alcohol choose to move across the street does not carry that legal nonconforming status with it. It starts anew at that location. This would allow somebody who was a legal conforming business or nonconforming business would like to expand at that location or broaden their business the ability to do that. Such as if someone was currently praict at not 24 hours they would be able to fight for an extension of that. So we wanted to make sure that for those businesses that were already -- had standing, that they could continue to operate their business as if the moratorium was not in place. But it would not allow them to pick up and move to another location. That was not anticipated with this.

>> Councilmember Liccardo: Okay. Has there been -- I know there was discussion at the Planning Commission level about this. Has staff come to a conclusion about whether it's advisable simply to allow businesses that are currently in existence to be able to move?

>> City Attorney Doyle: From my standpoint, this is something that came to my attention this morning and would like to talk more with the Planning Department. I think it is doable. I think this initial ordinance is an interim ordinance for 45 days. Though work its way through the Planning Commission is an ordinance which maybe go up to 22 months . That is I think where we would address this issue. I think it is doable but I think we haven't come to a conclusion on a recommendation.

>> Councilmember Liccardo: Okay. So we'll certainly in 45 days, there's nobody I imagine that's going to be inconvenienced in any way. We'll take this issue up again.

>> Joe Horwedel: That was my points. i don't think it would make it through that fast.

>> Councilmember Liccardo: Okay. I actually spoke with Jeff Stanley from bad boy bail bonds today, I perhaps have misread the ordinance but it sounds like it's of no threat to anyone I would like to imagine they would like to speak soon but I wanted to emphasize that I think they have consistently said and I have emphasized as well, that this is not about demonizing any particular business or business owner. It's allowing us to step back, deciding what's the best balance needs for the business, community, county and how to establish the best of those needs. With that I'd like to make a motion to approve.

>> Councilmember Nguyen: Second.

>> Mayor Reed: We have a motion to approve. Councilmember Nguyen had the second. I do have some cards from the public who wish to speak on this item. I think I'll take those at this time. Please come close to the microphone when your name is called. Tina Morrow, Eric Shanehauer, Alex Karras.

>> Good evening, my name is Tina Morrill. I live in the Vendome neighborhood. Sam, you did such a great job, I don't believe I even need to speak. I urge to vote for the neighborhood. As president of the Vendome neighborhood, I hear from neighbors a lot. Gosh Tina there's problems with tagging, gosh Tina, there's parking issues, there are problems over here, what can we do. We as neighbors we try to do away the city says, we work with each other, try to work with the neighbors and for the betterment of our quality of life. And that's what we're asking for now, for the sake of the quality of life of neighbors, neighborhoods, we need a little bit of time, please, to figure all of this out. We don't want to demonize businesses, we don't want to shut anybody down but we are concerned about our quality of life. And so I urge you to please vote for the moratorium. Thank you.

>> Mayor Reed: Eric Shanehauer, John Karras and then Michael Cole.

>> Good evening Mayor Reed and members of the city council. My name is Eric Shanehauer, and because I don't think Councilmember Herrera, Nguyen and Chirco were at our first meeting where we had the pleasure of discussing this I'm going to scroll through my high-tech presentation as I talk with you. And the pictures are of the signage and business that are on four blocks of the North First Street corridor so give you a flavor for what's out there. All we're asking today is that you support the moratorium. We just want to have enough time for the city and the county and the bail bonds industry and the neighborhood to work together to come up with some reasonable regulations to have protections for the neighborhood. The industry is heavily overconcentrated in the area. And we need to come up with regulations that will control that overconcentration, also to have decent separation between people's residences and our schools, and our parks. So I'm confident, if you stop the proliferation now, and give us the time to work together, that we will arrive at a place where we can all live together in harmony. Thank you.

>> Mayor Reed: John Karras, Michael Cole. And then Steve Sparacino.

>> My name's John Karras and I live in the Hyde Park neighborhood association. And I'm asking the council to vote to adopt the proposed ordinance establishing a temporary moratorium on new bail bonds establishments. My neighborhood, and the adjacent neighborhoods, have witnessed a slow but steady proliferation of bail bonds in a very small area, as has been demonstrated. The result is an overconcentration of bail bond establishments in the Hyde Park neighborhoods more family oriented business have been scweesed out that used to serve our neighborhoods and additionally there are other issues concerning the cause of some problems. Such as noise and lit earthquake and loitdering. And, you know, there are a lot of disputes, so, you know, concerning whether those are really attributable to the bail bonds or not I think that the temporary moratorium is needed to enable the city to ensure that the problems don't get worse while the issues are studied and given the appropriate consideration that they need. You know, we're not trying to eliminate bail bonds establishments in our neighborhood. We know that they serve a very important function. We just think that there ought to be

some reasonable restrictions. And we think that the moratorium will enable the city to figure that out. And I also think that the harm or prejudice to our neighborhood if the moratorium --

>> Mayor Reed: Sorry, your time is up.

>> Okay.

>> Mayor Reed: Michael Cole, Steve Sparacino and Michael Sparacino.

>> I'm Michael Cole, Michael Cole bail bonds. I'm against the moratorium, but more to the point I'm against if I lose my lease, I can't, if my landlord now knows that if he can raise the lease, like if I can't afford it, I'm out of business. I can't move. If I have a problem with him I can't move. I'm out of business. And this is my livelihood. I've been doing it for 13 years. It's all I know how to do. I live in San José as well, over in the Camden area. I have a son, two and a half. I have no other means to support him, except my bail business. And if there's -- if this goes through with the condition, the Planning Commission actually asked to put in, if we lose our lease, where we have to move, that -- to do it. The staff said not to do it now. To go forward without it. I think it should -- if they're going to go for it, even a temporary one, my lease is due on the 15th. If my landlord raises it, knowing he has me over a barrel, he can do whatever he wants. He can say you can't be here, you have to pay this much, our you're out and he knows that it's my livelihood and that's my point. Thank you.

>> Mayor Reed: Steve Sparacino, Bart Sparacino II.

>> Good evening, Steve Sparacino, I'm a bail bond agent. Thank you for your concern one thing, it falls in line similar to what Michael Cole presented. There was no question as to what I wanted to do, when I grew up I wanted to be like my father and grandfather and my uncle and my big brother as well but there's a big concern with the current verbiage of the moratorium. I look forward to the day that I get to take over the business. But God forbid something happened to the current owner which is Buffy Austie, what would happen to me as an agent, a non-owner? Now can I go and I can go to a current competitor of mine. But what happens to my own dream of taking over that business oring my own business in the future in this city and we've been doing business for three generations in the city? If I can't open up a shop anywhere in the city limits am I forced to go to an area that nobody owns me? I brought this up to my sons long established in this city and I said what do you think of this? And they said well I couldn't imagine San José, being here without Sparacino in the bail bond business. We've known you forever and ever and you've been in that spot forever and ever. If you guys weren't here, I don't know what -- it wouldn't be the same quite honestly. And we've worked hand in hand, I think we've gone above and beyond to reach out now to the local residents. We've gone to local associations to find some outreach. And in the current verbiage, I don't see a compromise. Would them going to all of the meetings, put forth by the city as well as our local neighborhood associations, at the outcome, you guys are still voting on the original language that was presented.

>> Mayor Reed: Sorry, your time is up.

>> Okay. I thank you for your time.

>> Mayor Reed: Bert Sparacino II. Then Ann Tonina.

>> I'm going to try to wing this here. My great grandfather Salvatori Sparacino came to San José in 1908, moving to the north second street, third street area, my family has had a presence there since that time, since 1908. My family came here because of the high S Inkcilian Italian community here. Is Sparacinos have been in this community for over 100 years, not having a problem with any of them. In 1951, my grandfather bought the 816 North First Street address, built the jail there, everyone was waiting with baited breath. That's why we're here, all the Sparacinos are here because we're next do a jail. Which happens to be on authority second street thank you Councilmember Liccardo for not trying to demonize us. But at some of the Planning Commission language you should have heard the language being thrown at us, a nuisance, comparing us to strip clubs, threats of violence, harassing and accosting children, drug uses, prostitution. My grandfather is turning in his grave because of these. My family has built a reputation of being at the forefront of the bail industry. My mother started and my father at that time the California bail acts association, my mother was only one of three women in the bail industry. It was unheard of. My family has done a lot to help this industry and to build this reputation to not be in a back room cigar smoke neon sign, tacky television show. Unfortunately, that's what residents and the people are seeing. And I'm here --

>> Mayor Reed: Sorry, your time is up.

>> Thank you.

>> Mayor Reed: John Reynolds, Antonino Petropino.

>> Mr. Mayor, I want to just get right to this. I really -- I'm John Reynolds. I'm a licensed California bail insurance agent. I understand there's a problem that's been going on with the community in regards to issues surrounding the bail business, or so it's being perceived. This moratorium is coming out and it could have huge consequences for myself, I think Michael Cole may not be able to, you know if he loses his lease where he is supposed to go? I'm an employee of Buffy, a lot of the bail bonds agents we're agency. The greatest thing aside the urgency of this moratorium, government code 65858, to have a moratorium the urgency, because of how the situation affects the health, the safety and everything of the community. Everything that's been talked about, nothing ever says we've done any of this or brought any of this onto the community but we assume that it's about us and the moratorium is going to be put on us that limits us and our livelihood based on no facts. We work with -- we're constitutionally established with the courts, I've been doing this for 15 years. I believe in the rules, the rules are there should be some sort of urgency to what's going on. The things that are happening within the community, the jail releases 24-7, every single day, outside of what we do. There's a huge pretrial release program that they let people out 24 hours a day. The light rail station is there that we deal with so many problems on a daily basis, just coming from that. But we're being criticized, and our livelihood, being in my opinion, attacked by trying to put in a moratorium based off of urgency. I don't see the urgency, you know. I want to fix the problem that they're having, be a part of the problem.

>> Mayor Reed: Antonino Petropino, William lambson.

>> Thank you, mayor and councilmembers. I appreciate you listening to me. My name is Antonina. this is a long time coming I've lived in the neighborhood for about 20 years, and in the past, I found a bail bonds business opening shop in a residence next door to me. It took code enforcement about a year to have them moved. They moved around the corner, and another bail bonds business opened up two doors down in another property not zoned for that kind of business, too. There has been three bail bonds businesses within 100 feet of my residence. I've reported to parking patrol numerous times over illegal parking on our neighborhood streets and my neighbors and I have occasionally called the police on loiterers in our neighborhood. Now, I know the bail bonds business do not feel that it is their clients but the only other business near me is Togo's. These people are not carrying Togo's lunch bags and with these offices so close by you can see where they're going. The point is that these businesses are encroaching into the neighborhood, into the residential neighborhood. They are establishing their offices in incorrectly zoned properties and there is a high krangs of them in such a small two-block area. In addition there are a few of them work 24 hours without a proper conditional use permit. I believe because there is no code for them nor contact with the city on where they should establish their business, the situation is out of control. You have a tool. Please use it. It's the police consider the temporary moratorium to establish -- to examine and correct the problem. Thank you.

>> Mayor Reed: Petra Fino, William lambson, buffy Austie.

>> Hello again. I'm going to try reading again because I just get so agitated I guess I don't know. My name is petra Fino. I'm here representing myself, my husband, my daughter as well as my next door neighbor Sue Lapsis who is going through medical treatment and can't be here tonight. No one of us are denying that bail bonds are not well needed businesses. Growing residential area of North First Street much which Hyde Park write live is a part. As a side bar earlier tonight you were talking about item 4.3, you were talk about the fourth street apartments, this is too and affected by whatever decision you guys come to here. A temporary moratorium will not affect the bail bonds businesses, will help them out by decreasing potential competition for them. Will allow us to take a step back, review the overcrowding of bail bonds businesses on first street and allow all us of as a community to come together and create a plan that is most agreeable to everyone. All through tonight, I heard work being together. And that's exactly what we need here. A temporary moratorium could allow us the opportunity to do the same thing and North First Street neighborhoods. I agree with some of the things the bondsmen were talking about tonight. The Planning Commission wording that businesses cannot be allowed to move if they're improperly zoned places. I agree, we need to change that. We need to allow these businesses to be able to relocate to places where they can, you know, legally operate. That's about all I have to say. Thank you very much for your time.

>> Mayor Reed: William lambson, buffy Austie.

>> Good evening mayor and city council members. My name is William lambson. I'm a 12 year resident and Japantown neighborhood association. I'm also president of Japantown neighborhood association. As a resident and president, I'm asking you to approve the Planning Commission's moratorium on the establishment of new bail bonds businesses in the community. And that we look forward to working with

the bail bonds businesses to identify and study the situation. This is impacting the community. This is -- you know, this is actually we're asking just to stop new businesses from coming in so we can work together effectively, to come to an agreement between the bail bonds businesses, because they put -- they serve in a very, very important role in our community and I think we understand that and we agree with it. We are not trying force them out of the community. We're not trying to impact existing, we're just trying to understand and study and get everybody to a certain level of understanding and knowledge. Because there's been a lot of accusations made in terms of potential littering problems, loitering, traffic, okay? It's not necessarily the bail bonds businesses. It's possibly the customers that utilize these services. And with this moratorium it will allow us to study and understand where these -- if there are these impacts, how they're affected the community and what possibly we can do to make this right. So again we urge you to approve this temporary moratorium so we can study the issue and all come to an understanding and agreement on how we can live, coexist together in this community. Thank you.

>> Mayor Reed: Buffy Austie is our last speaker.

>> Good evening mayor, Vice Mayor and councilmen. My name is buffy Austie, I've been a lined bail insurance since 1965. I've been the other than of bail bonds since 1958. I have to tell you I'm a little taken back by all of this moratorium and the neighborhood and I understand they're upset about you know, loitering and people that are causing mischief around their neighborhood. Even, you know, littering. With some, you know, bail bonds stuff. Well, I have to say, if there's bail bond literature on their property, I think you need to go to the bail bond company and address them personally. And I also say this: The Santa Clara County jail releases people 24 hours a day. Late at night. And the majority of those people are released on pretrial release, the county's own system of release. When we have people that we're posting bail for, we're having family members mostly come to our office, and sign and pledge their promise to guarantee these people's appearance in court. So they have an equity in this person. They actually will go to the jail and wait for that person to be released from custody, and then take them home. They're not going to post a bond and just willy-nilly let the person, you know, go and walk around and cause trouble. So I say to you, and if you're going to take a look at this whole thing, I tell you that pretrial release is the big culprit here, because they're releasing people with no responsibility. They're sending them out the door. And they're walking around the neighborhoods, they're probably knocking on those neighbors' doors looking for money to get on the light rail system.

>> Mayor Reed: Sorry, your time is up.

>> Thank you very much.

>> Mayor Reed: That concludes the public testimony. Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. Joe, I just wanted to clarify one issue that came up. I think it was if I'm not mistaken, Steve sparacino had a concern about what would happen if his employer ceases operations. Is there any reason why an individual who wants to buy an existing business can't just buy that business and continue to operate under the moratorium?

>> Joe Horwedel: That's correct. The legal nonconforming status runs with the business at the location, it doesn't run with the individual or even legal status.

>> Councilmember Liccardo: Okay. My understanding from our conversation is this is going to be a 45-day moratorium, and the much longer moratorium that would be coming to us shortly, there will be at least draft language for us to consider that will enable these businesses to be able to move, is that right?

>> Joe Horwedel: That's correct, as Rick's staff and my staff are going to be looking at that issue of how to accommodate businesses to relocate.

>> Councilmember Liccardo: Thank you.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. I want to thank all the speakers here, as I stated on May 19th, council meeting, I will not be able to support the citywide moratorium. I understand the concern and the proliferation of the bail bond business in that the stretch of the city on first street and second street, but I will support a moratorium just in that area, instead of being a citywide. Last year, Councilmember Campos and I felt that there were too many fast-food restaurants around the school, so our proposal is to have a moratorium to -- not to add additional fast-food around the school, but not to say whether we're going to stop any fast-food to coming to town. I don't know, Councilmember Liccardo, would you accept a friendly amendment to restrict the moratorium on just the first street-second street block, or do you want it to go citywide?

>> Councilmember Liccardo: Councilmember Chu, I appreciate the suggestion. I'd like to go forward with the vote as it is currently. If this vote should fail for want of votes, I'm happy to consider a more restrictive moratorium. But my concern is, is that as soon as you start drawing lines, there's going to be fights over where the lines are drawn. And we could end up with a much more challenging task than I think any of us want, and that is figuring out how to draw those lines.

>> Mayor Reed: The friendly amendment is not accepted, the motion stands by Councilmember Liccardo. Councilmember Constant.

>> Councilmember Constant: Thank you. I still don't support a moratorium. I think that really a moratorium is a bad way for us to do business. I think that as Councilmember Chu pointed out, there's other parts of the city where it may be appropriate to open a bail bonds. And I don't think that should be prohibited. I also think in this economy, we shouldn't be doing anything that limits any type of business, quite frankly. There are a lot of ways to work on this, and you know, the work can continue to work, I think, without having a moratorium. I'm really troubled by the lack of an opportunity for people to move their business. I think it puts them in a very bad position with their landlord. As was indicated by one of the speakers. Think about tonight, if one of these places burned down, and their only option to stay in business was to open up another place, maybe in the building right next door where there happens to be a vacancy. We would effectively be telling this person, sorry, you're out of business because you had an unfortunate accident. And I think that's far too restrictive. Even though I were to support it, I don't support it but if I were, that is something I just don't think is reasonable, because we can tell someone, you can't move, your landlord could do anything he wants, there could be bail bonds on month to month leases and I guarantee you after our action they're going to get an increase in their rent. Or they could have some other natural type disaster that would put them out of business. So I don't think it's a good policy.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. A question on the 45 days. So in the 45 days, it's going to return back leer, and that time -- I think in that time, Councilmember Liccardo referred to it or discussed it, including some of these issues brought up from the bail bonds companies will be addressed as far as the ability to relocate?

>> Joe Horwedel: That's correct.

>> Councilmember Kalra: Because I certainly understand their concern, especially, you know, and I commend the Planning Commission for making an effort to incorporate that into the motion. But I do agree with your assessment, your staff's assessment, that it's just a difficult decision to put -- the intricacies of that nature really shouldn't be your business and shouldn't add to the workload of the situation that does arise. As I stated when this came before us before, the reality is there are a lot of issues that occur in a neighborhood when you have a jail, and when you have the consequences of having a jail nearby. As one of the speakers indicated, and you know, for 11 years, I spent probably too much of my time down at that jail as a public defender and sometimes in and out of that jail at 11:00 midnight, visiting clients. More because of people released completed their sentence or because of pretrial releases or other types of releases as part of bail bonds it is hard to determine exactly what it is coming from. I think this is an opportunity really for everybody to be a good neighbor and that includes a bail bond company in playing a role what is it that is causing these problems that are most trumsome to the neighborhood. And working together to solve that. If littering is a problem that can be addressed as an issue. Because it's loiters, because of people released, having nothing to do with the bail bonds companies, that can be dealt with as well. There are other unintended consequences, but there is no doubt there are issues in this neighborhood because of the presence of the jail. One of the consequences of the presence of the jail is because there are bail bonds companies, Mr. Shanehauer showed us along the street all the bail bonds companies, some are a little tackier than others, certainly as to why, but that's also a further consequence of you know the societal we're in where we want to just lock everybody up. Well, there's consequences for that, too. Eventually they come out. If you happen to be in the jail, we all should be concerned about and address those issues very carefully. I will support the motion and really urge the staff to work with the bail bonds companies and with the neighborhood to address some of the very legitimate concerns that some of the bail bonds companies, owners and employees, raised, in giving too much leverage to some of the landlords. And in this economy, it's hard to believe someone would be so vindictive to get rid of a tenant that's paying. The consequence could be there and it's a legitimate concern. I also want to urge the bail bonds staff and neighbors to really try to identify what the underlying issues are. If some of them are because of the bail bonds companies, then as stated go directly to the companies that you think is causing the problem. If there is an inordinate amount of

littering, go to those companies. If people are being released 11:00 at night or early in the morning, because people come to that area because there's a police department, there's testing that happens, there's probation in that areas with the jails with the county and the city to address some of those problems. But it's just, I certainly can sympathize with the businesses but at the same time, it is a neighborhood, as well. And so -- and people live there. So I just would encourage that a more global look is taken, in the tweaks come, as to how to solve some of these problems. And again, would urge the staff to really find some way of, as has been indicated, of understanding the concerns of the business. Because we certainly, as Councilmember Constant indicated, don't want to discourage businesses that are operating legally and within their rights. Thank you.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, well said, councilmember, well said. I want to go back to the first question that the councilmember brought up about the 45 days. I want to understand that, I want to be very clear what we're actually voting on, so that I do not have any confusion in 45 days of what I'm voting on again to move forward which will be permanent. So from what I understand, and Rick, you can interrupt me, if I'm not stating it correctly. But from what I understand, within the next -- what this vote means is we'll have a moratorium of 45 days which will give you and the City Attorney, planning and city attorney's office, time to address the concern about the existing businesses and how we ceem them whole, so that they can still operate at full capacity in the City of San José. Is that what I'm hearing that you've going to go back and try to flesh out?

>> City Attorney Doyle: Yeah, the law requires, state law requires that we adopt the 45-day ordinance. And then we can come back and the council can consider a longer term, at a second reading. But this is essentially a time-out and that is the purpose of the moratorium. To the extent --

>> Councilmember Campos: Can I just ask you a question? You said a time out. At the second reading if we decide what you come back with is not -- does not meet the standards of the council, then you can --

>> City Attorney Doyle: Then you can vote it up or down. This ordinance expires in 45 days. Unless the council takes subsequent action on a new ordinance, it can go as long as two years. There is no moratorium. So you get another chance. This is an initial time-out, staff comes back with an assessment, I think, and we will give consideration and look at, what I'm thinking off the top of my head, grandfathering existing business to allow them to relocate in the event they want to relocate, because the whole idea is to maintain the status quo.

>> Councilmember Campos: Correct, yes. I understand, it wanted it to be clear so there is no confusion as we vote yes or no for the next 45 days moratorium. I would encourage staff as well as you move forward in these discussions that in the next 45 days that we really figure out how we are able to create an ordinance that is very fair and equitable for the businesses that are currently existing. And I think they brought up a lot of valid concerns. I also think that the residents also brought up some valid concerns. And I don't know how you tackle that. I mean, it's a bigger issue, and how do we have that conversation with the county. Because it is a bigger issue, it's not just the bail bonds. It's a bigger issue.

>> Joe Horwedel: And I want to be really clear. What the council is doing tonight is a 45-day moratorium. In three weeks, we will be back for an extended moratorium. Right now, staff is looking at up to 22 months, that staff is not coming back in 45 days with an ordinance to go and deal with bail bonds. But what we will be coming back with is a moratorium. What we'll be looking at is, can we add a provision to that moratorium that allows a legal business or existing it will not allow a business that is illegal to go ahead and relocate. That is one of the options for us to talk about, when we come back, for a business that has no legal standing but is existing, there are a number of e-mails, the community has pointed out, there are businesses that are clearly in illegal location They are not allowed by zoning, never allowed by zoning, should we allow those in legal location? That is something when we come back, we'll allow some options on how to deal with that but I want to be really clear we're not coming back with an ordinance in 45 days that will solve everything you've heard tonight.

>> Councilmember Campos: So that I'm clear and I think that the majority of the people that spoke that are part -- that have businesses, I would believe that they're legal and established businesses. I don't have that information whether they are or they're not but I think that that's why they're here. So I appreciate that clarification. I'm going to support the motion, and support it hoping that in 45 days, there's something that's a little bit more concrete and clear, that I could support, or not, that will be beneficial for all parties. Thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: It's going to be short and sweet. I haven't seen as much data as I would like to see, so Joe, I guess I'm asking you, will we be seeing more of that? I mean, I'm hearing, they're doing this, they're doing that, they're doing something else, but I haven't seen any data to back that up.

>> Joe Horwedel: There are a number of e-mails that have come in from the community with the concerns of the allegation that they've raised. We've asked the community that if there are events that are occurring now, to call code enforcement so we can document those. So if there is noise going on at 2:00 in the morning call at 2:00 in the morning and stick the phone out the window so we can hear what's going on. We will take that as evidence. But we are -- we have what we have. Staff is not going to be off doing a major research effort come back with that. There are a number of other assignments you've given my staff to work on that are task-driven already that we've said we will get done. This moratorium is allowing us to finish those out, that's why we're asking is for 22 months to come back and spend the time on it.

>> Councilmember Pyle: I agree with Councilmember Constant we don't want to do anything to discourage business in the city. But during that 45 days we're not allowing new business.

>> Joe Horwedel: Corrects.

>> Councilmember Pyle: We're not discouraging or altering or changing the current businesses that are here.

>> Joe Horwedel: Correct, if a new business, bail bonds business came into the permit center, wanted to open up, we would say that the moratorium is in place and we can't approve it at this point. An existing business wanted to come in and needed to renew its use permit, wanted to come in and get a building permit to add on to the building those types of things we would have the ability assuming that council adopts in 45 days a revised moratorium that gives us that flexibility we would continue to allow that business to operate in San José.

>> Councilmember Pyle: And if something untoward happens to any of the bail bonds people through no fault of their own they would be exempt?

>> Joe Horwedel: They -- and that's how we would set up, is they would have the ability to relocate. I do want to point out we do have provisions in our zoning code for businesses that if they have a fire, earthquake, those types of things we have the ability to approve temporary trailers for those businesses to be back up and running on that plot. We recognize things like this happen. We deal with fires day in and day out and we work very hard to get them back up and running.

>> Councilmember Pyle: Thank you. Thank you for those clarifications.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: I just wanted to point out that on May 19th, this council for all the members who are here unanimously approved and adopted a resolution know to initiate moratorium proceedings. It is not significant what's changed between now and May 19th. really the big question is what new language may come up in this ordinance that is going to be relevant for the locker period of moratorium and I think obviously that's an important discussion for us to have and I know Joe and Rick will be working hard on that language. In the meantime we're going forward with something we've already approved.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Well, I disagree, we already approved it. Because I, before making my vote, even made comments that I thought we needed a lot more information and staff work before we could make a decision. Otherwise we wouldn't be here taking a vote today, we would have just let the last vote stand. But I want to point out that one of the things we're doing is, we are expending a lot of energy and staff time in a moratorium, but we're not addressing the main issue. And that is our zoning designation and definitions and what requires a C.U.P. and what doesn't. And what concerns me is the comments that we just heard from Joe, is that only legal businesses will be allowed and those that they deem illegal will not be allowed. Well, that is where all that this started in the first place was whether a bail bonds is more like an insurance company or more like a 7Eleven. And those -- that fundamental question of the C.U.P. or not, and whether it's a personal service business or an insurance business or those other designations, will still remain. And the same people are going to be impacted. So while we are saying, in sum snippets, that some businesses will not be affected, I don't think that's the case because once we take that action, we still have the underlying problem of the zoning that's not being resolved. I think we'll have fight after fight with each individual person because we failed to address that fundamental difference of opinion. And when we talk about those use permits or people coming back to review their use permits, when we talked about them in May none of them had use permits because none of them had been required to get one. If that's all of a sudden something that the planning and building thinks everybody

has to go through, I want Joe to clarify. I can see half of them being forced identity of business in the next 45 days or the ensuing 22 months.

>> Joe Horwedel: Thank you, Councilmember Constant, that's a very good point. I want to clarify for the community and the council, the question has come up how we are doing for enforcement and 24 - hour use. Staff has suspended the enforcement of the 24-hour business for the bail bonds while this issue is being resolved. We are not enforcing sign violations or out of code violation you heard a couple of residences talk about bail bonds businesses moving into a home without bail bonds permits. If it is zoned R-1 you cannot put a bail bonds business in there, it is not allowed. these uses the council is not assuming or anticipating that they can move around the city on a moratorium. If they never were legal to begin with they are there but they are not legal. I think the whole issue ever personal service is an important issue and I'm glad you raised that question. That, I would put in the same category as the 24-hour use. I would not recommend pursuing enforcement on somebody where it's an office zone where personal service is not allowed. Is that you know taking a broader approach than that a bail bonds is potentially an office where the coil has been having that discussion while the moratorium is in place staff would take a more lenient approach to that enforcement, not hold that over a business and we would essentially toll that provision. The last point for the benefit of the community and I guess for the businesses themselves is if there are in fact businesses that we find out are creating problems at, you know, 2:00 in the morning with loitering and other kinds of issues regardless of the standing we will still pursue it under the nuisance provisions we have available. Regardless whether they're legal, legal nonconforming or nonlegal. We'll still pursue it as a nuisance provision. I hope that clarified how we first --

>> Councilmember Constant: I want to make sure that's clear to everybody since it's not part of packet that we have. So what I'm -- to make sure that we're correct if they're in a commercial or personal service zone, they're going to be allowed to continue as they are, without having to get a C.U.P. until we fully address that issue?

>> Joe Horwedel: That's correct. Until we resolve that issue we would just stay that question. And that would be one of the options I was talking about we would bring back to the council with the moratorium to the extending term to be clear about how we would deal with that.

>> Councilmember Constant: I still think with all of the energy we have expended on this we could have attacked the initial issue that needs to be dealt with and all we're doing is kicking the can down the road several months. Thaimpg.

>> Mayor Reed: Attacking the actual issue is going to take a lot of work more than we have expended although we have expended a lot. So this is an interim temporary 45-day thing and I'm looking forward with great anticipation to having this argument all over again nor the third time for me fourth time because its went to Rules Committee to fourth time in three weeks. I can hardly wait! Councilmember Campos.

>> Councilmember Campos: Mayor, I just wanted to disclose that my office met with Dustin Derolo on this issue.

>> Mayor Reed: City Manager has some comments to add.

>> City Manager Figone: Joe, if you can just clarify for me if no one else when we come back in a few weeks will you be able to describe the scope of work and what we'll be addressing over the 22-month period in addition to maybe clarifying some of these frequently asked questions?

>> Joe Horwedel: We're going to try. It's just with the agenda deadlines that are working it will be a challenge. But I think at least by the time at the council meeting, we -- it maybe something that's on a blue memo type of format. But I think it would be helpful for us to lay out some rules of engagement during that timing.

>> City Manager Figone: Perhaps verbally with a slide could be helpful.

>> Joe Horwedel: And the realistic thing is this is a 2010 issue to come back to council so you don't have to worry with us being back in six weeks with the final ordinance. Realistically it's going to take some time to work through it.

>> Mayor Reed: All right, I think that concludes the council discussion on this. We do have a motion on the floor to approve this interim. All in favor, opposed, Chu opposed, Constant opposed, motion passes on a 9-2 vote. We'll see you back in three weeks, is that right, Joe?

>> Joe Horwedel: That's my recollection, and Rick, you can correct me --

>> City Attorney Doyle: And you'll see a staff report well before then.

>> Mayor Reed: Okay, that concludes that item. I have no cards under open forum, and that is the last item on the agenda. We are adjourned.