

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

>> Mayor Reed: I'd like to call the meeting to order. This is the Rules and Open Government Committee meeting for April 29th, 2009. First question is, are there any changes to the agenda order? None, okay, council agenda for May 5th. Anything on page 1? Just note that there is no evening meeting. We cancelled that. Doesn't mean we won't go into the evening with the afternoon agenda but no evening meeting scheduled. Anything on 2 or 3? 4 or 5?

>> Councilmember Constant: Mr. Mayor, I want to drop 2.5A. That was my excused absence for this meeting but I'm here.

>> Mayor Reed: So the other excused absences would remain on?

>> Councilmember Constant: Yes, sir.

>> Mayor Reed: We're happy to have you here today.

>> Councilmember Constant: Oh, thank you.

>> Mayor Reed: Anything else on 4 or 5? 6 or 7? Item 3.6 is the single use bags. We had quite a discussion here and there was additional work. Is there a supplemental staff memo or what's coming out on that?

>> Yes, the supplemental was released earlier this week.

>> Mayor Reed: Okay.

>> I don't know if staff was here but it was released.

>> Mayor Reed: Okay. Anything on 8 or 9?

>> Airport West property.

>> Mayor Reed: Let's see, airport West is -- 4.2. I'd like to try to have that right after the consent calendar. Well, some people think we're going to be done by 4:00. So rather than have it not before 4:00 we'll do it right after consent.

>> Okay.

>> Lee Price: 4.2, right after consent?

>> Mayor Reed: 4.2, airport West property.

>> Lee Price: Mr. Mayor if I could note, there are four cross references out of the CED committee for April the 27th so we'll pick those up on the amended agenda. And those relate to the 1st Act small wonders update, the update on the City Hall exhibits, the homeless update and the SB 375 update.

>> Mayor Reed: Okay. Anything else on 8 or 9? Page 10 or 11? Continued to an evening meeting. 5.2 is recommended for deferral to an evening meeting, that is the Hoffman Via Monte SNI. Boy, this land use calendar is very skinny. Got to have some people have some money so they can tart some projects. On that agenda we have I think three memos out from councilmembers regarding independent police auditor, I've got two memos out, I think, and councilmembers Campos, Chu, Herrera, Kalra, and Pyle have memos out. Whatever it is, we need to put on, based on the memos two things on the agenda. One is to discuss disclosure of items from closed session, and then a discussion and direction of process moving forward on the independent police auditor. And I think all of the memos then -- all the issues that people have raised will get covered with that but --

>> Councilmember Pyle: I would like to suggest that in reference to the police auditor memos because we've basically reached agreement that both memos be included, we could see that they align with each other and that we're both on the same page.

>> Mayor Reed: Right, yeah. All the memos ought to be posted so everybody can see the memos. That should be the issue with that, City Attorney.

>> City Attorney Doyle: Mr. Mayor just clarification. The first memo of yours, dated April 14th, deals with Mr. Constantin. That should be moot at this point.

>> Mayor Reed: It should be dropped.

>> City Attorney Doyle: Just as a clarification, we can be prepared to discuss memo of April 20th, discuss protocols dealing with conflict of interest if the council wants us to, I suspect we would have to draft something ultimately but we can be prepared to have that conversation if council wants.

>> Mayor Reed: Okay.

>> Councilmember Pyle: I think that's a great idea, since there's so much confusion about some of the rules and regulations, certainly needs to be simplified. And make it easy for people to do the right thing.

>> Councilmember Constant: If I could just add, that conflict discussion should be both sides, so if there is a complainant who is making a complaint to the IPA, but there's a conflict that arises because of a relationship or something with IPA staff, as well.

>> Mayor Reed: Well, a conflict can come from lots of different directions. And the issue is whether or not we're prepared to deal with it. And we don't need the answer on Tuesday. It's just something the City Attorney and the IPA's office need to work on.

>> City Attorney Doyle: Yes, it arrives all the time and we just need to know if we're aware and how we address it.

>> Lee Price: Mr. Mayor, I think I need a little guidance from the committee about what you want the agenda to say. I know you want all the memos posted but can we talk a little bit about what the agenda item for this should actually say?

>> Mayor Reed: I think if we agendize a discussion and an action regarding process for the selection of an IPA. That's broad enough to cover anything anybody has got in the way of memos. And the other one is, my request to disclose council votes, discussion and background materials, et cetera, that's on my memo of April 20th. But that doesn't have to be that specific. It's a discussion --

>> Lee Price: Item B?

>> Mayor Reed: Discussion and action regarding disclosure of closed session votes and discussion and materials. Dealing specifically with the IPA, not globally. Let's not get people excited. Is that specific enough, you think?

>> City Attorney Doyle: Yeah. Cover everything you can.

>> Mayor Reed: Okay.

>> Councilmember Pyle: I just had a couple of questions.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: If I could. First of all do we need to have some identification of the city department which would be coordinating? It would be the mayor's office, is that correct? Because we have a conflict of interest of the city attorney's office, is that correct?

>> City Attorney Doyle: For the purposes of the agenda, you have memos coming from the mayor's office and the council office. So I just think it doesn't have to say anything. It's your item and you can talk about it.

>> Mayor Reed: In other words, it's not up to the City Attorney or the manager or the clerk to prepare any additional materials.

>> City Attorney Doyle: Right.

>> Lee Price: We'll just forward all four memos, all three, sorry, three memos.

>> Mayor Reed: Okay, I have one card from the public to speak on this, Schuyler Forest.

>> Mayor, members of the Rules Committee, I just have one small request, that this item regarding whatever new process for the selection of the independent police auditor, and the CPLE item which was deferred to the May 5th agenda be scheduled for a time certain.

>> Mayor Reed: Okay, we'll come back to that and look at the rest of the agenda. We'll come back to that time-certain item and look through the adds and figure out what else we've got. Let's do that now. The adds, requested adds, proclamation for municipal clerks' week, proclamation for Asian Pacific American Heritage Month, excused absence for Vice Mayor Chirco, Constant and Chu. And then City Attorney, you had the request for an urgency ordinance to delay the effective date of another ordinance.

>> City Attorney Doyle: This is in relation to the card room settlement, really to bring it into effect. It would be an uncodified settlement, but changes to title 16 and also changes to title 20. The title 20 changes are coming to council on May 19th. They won't be effective until June. Title 16 already happened. What these will do is make them coincide, they should be effective at the same time. Until 20 comes into effect the existing title 16 would remain in effect. These are to bring it through sync. If it comes to council, and council adopts it on May 19th then everything would be effective by the end of June. We anticipate June 26th.

>> Mayor Reed: Do we have any issues from the other parties in this?

>> City Attorney Doyle: Not that I'm aware of. I've asked my staff to make sure they're -- sorry, make sure they're aware of and I'll follow up on that. But this needs a -- this does not comport with the sunshine rules and would need to have a waiver of the sunshine rules.

>> Mayor Reed: Fanned we don't hear it on May 5th?

>> City Attorney Doyle: The ordinance then title 16 would take effect on May 7th. That's why it's a time-sensitive issue.

>> Mayor Reed: May 5th is the only date to hear that.

>> Councilmember Constant: So I'll make a motion to exempt the sunshine requirements first.

>> Councilmember Pyle: So that we don't have to do it on that date?

>> Mayor Reed: So that we can do it on that date.

>> Councilmember Pyle: Oh we can do it on that date. Second.

>> Mayor Reed: We have a motion for waiver of sunshine requirements on that one item, May 5th item. All in favor, opposed, that's approved. Back to the agenda, any other additions, City Clerk you had four referrals from the Community and Economic Development that you mentioned earlier, those are going on this agenda?

>> Lee Price: Yes, those will be going on the agenda identity of committee.

>> Councilmember Pyle: Motion to approve the agenda.

>> Mayor Reed: Motion to approve the agenda as amended. We still need to figure out the sequencing if there's a time we can count on. So I think the CPLE item and the IPA item are likely to be lengthy. I don't know that there's a lot else on the agenda that's going to take a long time.

>> The airport West item is immediately following consent.

>> Mayor Reed: So that would be on first.

>> Is the IPA not before 3:00 p.m. and the CPLE not before 3:30? Try that.

>> Mayor Reed: I think we could put them both on, not before whatever time it is. But is it 3:00? Sounds good. The ceremonials and the opening stuff usually takes us 'til 2:00. Not before 3:00 is as close as we could plug it.

>> Lee Price: Do you want a preference of how they should be heard? Do you want them flipped?

>> Mayor Reed: I think we should hear the IPA selection item before we hear the CPLE item.

>> Lee Price: Okay.

>> Mayor Reed: Is that okay?

>> Councilmember Constant: Okay with me.

>> Mayor Reed: Anything else? We have a motion to approve as amended. All in favor? [ ayes ]

>> Mayor Reed: Opposed, none opposed. That's approved.

>> Councilmember Constant: Mayor, can I ask a quick question?

>> Mayor Reed: Yes.

>> Councilmember Constant: Rick account with the urgency ordinances and sunshine, do we have an exception for urgency ordinance or is that something we should bring back so we don't have to --

>> City Attorney Doyle: No, I think it stands with the rest of any other ordinance. The reason it's an urgency ordinance under the charter, have you to make findings to protect Public Health, interest, basically through your police power. I don't think it should be excepted, it just happened that this crept up to us. It should be subject to the same rules.

>> Councilmember Constant: Okay.

>> Mayor Reed: Next item is the May 12th city council agenda, which is 3.2. Anything on page 1? We do have a special budget hearing that night, in the evening. We'll be into the budget -- well into the budget process by then. Anything on page 2 or 3? Page 4 or 5? Page 6 or 7?

>> Councilmember Constant: Mr. Mayor, I was wondering if anybody would be opposed to bumping 4.5 for just one week. I just heard I wouldn't be here on the 12th.

>> Mayor Reed: 4.5 is the --

>> Councilmember Constant: Stevens Creek signage program. Because of my mishap yesterday I won't be here on that date, and this is in my district.

>> The homework center, we could request immediately after consent, the item be heard. I believe the superintendents will be present.

>> Mayor Reed: Okay, so we can bump the Stevens Creek a week.

>> Lee Price: So we'll show that as a recommend for all, since it's a public hearing we've noticed that.

>> Councilmember Constant: Sorry about that.

>> Lee Price: Okay.

>> Mayor Reed: And the homework center one --

>> Time certain next week. We'll talk about it.

>> Mayor Reed: We'll talk about time certain for 5.2, anything else on 6 or 7? Page 8 or 9? Page 10 or 11? That's it. I have no written requests for additions.

>> Councilmember Pyle: That's different.

>> Mayor Reed: Back to the homework centers, superintendents, do that right after the consent calendar?

>> Yes, please.

>> Mayor Reed: That's the best, most predictable time for those.

>> Councilmember Constant: So is the only thing we have in the evening the budget item?

>> Uh-huh.

>> Mayor Reed: Anything else?

>> Councilmember Pyle: Move to approve as amended.

>> Councilmember Constant: Second.

>> Mayor Reed: Motion is to approve as amended. All in favor? [ ayes ]

>> Mayor Reed: Opposed, none opposed, I'm going to go back to the May 5th agenda because I have a question for the City Attorney about my agenda requests on disclosure of council votes. I intend to ask for disclosure of votes from yesterday's meeting, as well as the April 7th meeting. This isn't real specific about, actually doesn't specify a date.

>> City Attorney Doyle: I think we can, you know, if the committee's direction is to agendize it as anything regarding the IPA recruitment, that would encompass yesterday's as well as any previous meetings.

>> Mayor Reed: Okay.

>> City Attorney Doyle: And it would be broad enough to have that conversation.

>> Mayor Reed: Okay. Then that completes the city council's agenda. Redevelopment agency agenda. May 5th, anything on page 1? Page 2 or 3? 4 or 5?

>> Mr. Mayor, members of the council, Gary Miskimon with the redevelopment agency. Item 8.2 the tax increment, tax collection from the area, there will be a supplemental memo so the council can make the required findings, that will be out we suspect by tomorrow.

>> Mayor Reed: Okay. Anything else on this agenda?

>> Councilmember Constant: Motion to approve.

>> Councilmember Pyle: Second.

>> Mayor Reed: No requests for additions. All in favor? [ ayes ]

>> Mayor Reed: Opposed, none opposed, that's approved. May 12th draft agency agenda. Anything on page 1 or 2? That's a short one. Although we do have for purposes of noting, agency board and council actions regarding development of major league baseball stadium issues on May 12th, just in case anybody's watching this at home. That is, the recommendation is for approval of negotiating principles for the development of major league baseball stadium along with community engagement process.

>> Councilmember Constant: That's correct. Motion to approve.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion is to approve. All in favor? Opposed? None opposed, that's approved. That takes us to legislative update. State and federal.

>> Betsy Shotwell: Thank you, Mr. Chair. And committee, Betsy Shotwell, director of Intergovernmental Relations. Requiring school of 50 or more students to transition to green cleaning materials, that is assembly bill 821, less harmless chemical materials, when economically feasible. Staff is here to answer any questions you have.

>> Mayor Reed: Any questions on AB 821? Councilmember Pyle.

>> Councilmember Pyle: Is it anticipated, Betsy, because the greener cleaning materials are sometimes more expensive than the other ones, that because of the greater use of those other ones, the price will kind of balance out after a certain period of time?

>> Betsy Shotwell: One would hope. I can't predict the market, obviously, I don't know if staff has any -- yeah, if you have any findings that you --

>> Linda Shay, environmental services. I've done a bunch of services. It looks like green cleaning products are not necessarily more expensive than other cleaning products. There are a lot to choose from so it shouldn't be an issue.

>> Councilmember Pyle: Glad to hear that.

>> Mayor Reed: Anything else on AB 821? Is there a motion?

>> Councilmember Pyle: Move to approve.

>> Councilmember Constant: Second.

>> Mayor Reed: Move to approve the staff recommendation on AB 821. That needs to go on the 5th.

>> Betsy Shotwell: Please.

>> Mayor Reed: And AB 283, Chesbro. Product stewardship act of 2009.

>> Betsy Shotwell: For cradle to cradle, for lack of a better word. This is a legislative guiding principle that the council approved in January. It's cutting-edge stuff. So I will have to see how this plays out.

>> Mayor Reed: I do have a question about it. On Monday, I spent some time in Sacramento with some of our solar manufacturers that we're working so hard to keep in California and in San José. And one of those in particular, nanosolar says they had calculated that this bill would require them to fill out 400 pages of forms in order to sell their solar panels. And I'd really like to know whether or not that's an accurate description of the kind of paperwork that would be required for products, because it's not just the solar panel. It's I think every component and every piece of it. I don't fully understand it but I would like to know what the impact is on companies we're trying to recruit, the clean technology companies in particular before we move ahead. I looked at the people in favor and the people opposed, didn't really see any manufacturers on this. Some business groups. Silicon Valley leadership group I don't think has taken a position yet. But I really like to know if we're going to create a bureaucratic nightmare. For example, the kind of bureaucratic nightmares we have that causes trouble right now for a solar, residential solar application, in order to get the state tax credit, you need about 67 signatures on 100 pages of forms. Some states do it in one page. So I'd like to know if other states are doing this in a very simple way that won't create an incentive for people to move to Nevada or --

>> Betsy Shotwell: Right.

>> Mayor Reed: -wherever. We're struggling with that right now. That's one of the reasons I was in Sacramento, to try to deal with that. If we can get some response on that.

>> Jo Vintec, Department of Environment, deputy director. The only items that are included in this bill are the universal ban for waste, that we're struggling to find a home for now. This doesn't target any manufacturer, just the products sold in California. So any particular manufacturer is not targeted but it is silent on the issue of solar, the chemicals and the products used in solar panels. The only thing that the bill is addressing as written is the universal waste that is already banned from the landfill, that we're already trying to find a solution. Environmental services is meeting with the Silicon Valley leadership group environment committee on May 18th and we'll be talking about what the developments are in products in California and going over this bill with them. But it does not specify anything to do with solar manufacturing in this iteration. It is a framework bill to establish processes for the different types of waste that would go through it and the only waste that are specified to go through it are the universal waste that are already banned from landfills and those are largely electronics.

>> Mayor Reed: When are you meeting with the environmental group?

>> May 18th, the environmental committee.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: I just had similar concerns, one is, it's really hard on a piece of legislation like this that has no specifics to really figure out what the fiscal impact would be. Quite frankly, would the city see any of the \$50,000 that we devote solely to the disposal of universal waste, and would our taxpayers who are out there buying these products have any fiscal impact? The only thing it really does is seem to cost the state money for sure in creating another bureaucracy which is the CIWMB. So I would personally like to see more about it and know more about those impacts. Because I fear that there are so many things happening at the local, state, and federal level that just keep adding a little bit more, little bit more in the costs and the bureaucratic paperwork that we're not really looking at the cumulative effect. And without specifics, I think it's hard for us to take a position.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Are we going to have cost if we don't do anything about this?

>> Currently we do hazardous waste pickup for people who only desire to do the right thing to trudge over to the hazardous waste facility when it's open. Most of that material is illegally ending up in our landfills and we are facing increasing issues on our water quality side. They mitigate a very, very small percentage of the problem and as our regulation -- regulatory world goes more complex we're going to be needing to come up with a more rigorous program that is going to be significantly more expensive to implement. We -- when we -- cities deal with

the issue on the back end, it's the most ineffective costly way to deal with it. And you can see from our numbers, the very small amount we are dealing with is costing us about \$700,000 a year.

>> Mayor Reed: Before I move ahead I'd like to hear what the manufacturing group community has to say about it. I don't want to stumble into something that we're not aware of, with this framework. It's Mr. Mayor a spot bill kind of framework. You don't know where it is going to end up.

>> Can I add something?

>> Mayor Reed: Sure.

>> Linda Shay, environmental services. A lot of the companies that make these products have already had to address a lot of these issues because of the European ROHS reduction of hazardous substances might be. It might not be as onerous as we might think. Additionally --

>> Mayor Reed: Could you get closer to the microphone? I don't think the audience can hear you very well.

>> I'm always told I don't talk up. I just want to point out that product stewardship is part of green technology and this is something that's coming. Just something to be mindful of, as we see this coming up.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: I just wanted to say, what is going to reduce our city's cost? There is nothing right there that we can see and that needs to be quantified in order for me to support this.

>> Mayor Reed: Okay, after that meeting hopefully some of those issues may have gone away. The other one is Senate Bill 346, Kehoe, hazardous materials motor vehicle brake friction materials.

>> Betsy Shotwell: I'll be happy to answer any questions you may have.

>> Mayor Reed: Any questions?

>> Councilmember Constant: Just I know I read in here that there are some manufacturers that have been working with this and of course I can't find it because I didn't highlight it. But there isn't really a list of supporters and opponents yet. Is it just because it is new and there hasn't been an opportunity to really talk about it, or -- I just again would like to know what the manufacturers think in a little more detail, and what's going on.

>> Betsy Shotwell: The bill was heard in environmental quality and passed, now it's on to the fiscal committee. The analysis included a long list of supporters. The opposition listed in the analysis for that committee was the alliance of automobile manufacturers, for the record. But I don't have a statement as to their opposition.

>> Mayor Reed: That was the senate environment committee?

>> Betsy Shotwell: Correct.

>> If I could just add to that, we don't have specifics on that particular opposition. But the legislation before you, pardon me, Melody Tovar, environmental services director. A brake pad partnership that's going on for more than a decade that involved manufacturers from the very start. That involved that partnership and that decade of work. It doesn't involve all manufacturers but it includes a substantial number of manufacturers. The data collection alone on that effort again a ten year effort has involved the volume of brake pad manufacturers, it's about 40% of what's manufactured and sold in California. We've had a substantial list of opposition.

>> Mayor Reed: If the committee wants to send this on, we would like the list of opposed, it says governmental and environmentalists.

>> Councilmember Constant: Do you know, when you have car manufacturers that are building cars for the entire United States and of course imported cars as well, how would we effectively even monitor or enforce something like this, if we're one of 50 or would this make us, you know, 10 of 50?

>> We don't have that information today but we'll look into that. The enforcement is envisioned to be through a state agency, with noncompliance being addressed through some type of fine or penalty to a manufacturer versus recall, which in the case of automobiles would be the other option, a more delicate option. So it's taking the more practical route of addressing the manufacturer rather than the consumer. Or the end party.

>> Councilmember Constant: I don't mind, this is something that shouldn't be affecting everybody, and so that we're not kind of off in never land if there's other options.

>> Mayor Reed: Do we have an analysis of what impact this might have on our NPDES permitting on copper? I know 35% of the copper in urban watersheds is from brake dust so it's got to be a pretty big number. Where are we from NPDES requirements?

>> Both wastewater discharge and storm water permit as drafted have specific issues, numeric triggers that would enact additional activities. One envisioned for storm water is brake pads identified as the largest source of copper coming from our storm water runoff. And this brake pad requirement is enumerated in our storm water initiative.

>> Councilmember Constant: So we should do nothing about slowing down by creek?

>> Mayor Reed: Buy a Prius and you don't ever have to touch your brakes. Same thing with the Tesla. Anything else on this? Is there a motion to approve?

>> Councilmember Pyle: So moved.

>> Councilmember Constant: On the brake one, you're going to come back with more information?

>> To return to Rules or supplemental at council?

>> Councilmember Constant: Either way, as long as the info comes.

>> Supplement at council?

>> Betsy Shotwell: You can do it this week for next week's agenda?

>> Mayor Reed: Move it ahead and get the collaborators. Motion, all in favor, opposed, none opposed. I was in Sacramento on Monday at the request of senator Alquist who is carrying SB 338 for us, to expand California alternate energy and transportation financing authority which the governor and the treasurer used to ensure that Tesla stays in the State of California. The language is a little bit difficult, and needs to be clarified, so that financing authority could also work for clean energy companies like solar manufacturing. So that's a request to amend it to broaden it. It passed out of committee 10-0. I was accompanied by half a dozen solar companies that went up to speak to it. Nanosolar is one of those. It's a great example of why this was necessary. Nanosolar was founded in the owner's living room a few years ago. They now manufacture the lowest cost solar cell here in San José. They've got their plant in Edenvale and their capacity is sold out for four years. They very much want to expand. They want to do it in California and they want to do it in San José. They can't get financing in the capital markets and this bill is a financing tool, that's why we're supporting the bill, that's why Elaine was carrying it. That was reported out of that committee now it's on to budget committee which will be more difficult.

>> Betsy Shotwell: Thank you very much for participating.

>> Mayor Reed: Roxann did a good job of coordinating, and so it was a successful day, only get it out of committee but if it doesn't get out of committee it doesn't go anywhere.

>> Betsy Shotwell: Right.

>> Mayor Reed: Nothing from the federal, meeting schedules none, public record, anything from the public record? Councilmember Constant.

>> Councilmember Constant: Mr. Mayor, if we could have item A from the Sr. commission just referred to the City Manager.

>> Mayor Reed: That's regarding the frequently called numbers.

>> Councilmember Constant: That would be easy to remedy as we go forward. I know that some of our council offices have frequently called numbers on their Website. If it could be distributed so everybody can make the change. I know some stuff has to wait to get reprinted there are some things that need to be reprinted immediately. And then I have a question on C.

>> Mayor Reed: The bill that somebody's carrying.

>> Councilmember Constant: I've had conversations with members of the senior commission. Albert, many is there something we can do here or something we're analyzing to bring back at some point through the legislative support or oppose process?

>> Albert Balagso: Councilmember Constant, we'll day a look at it. What I don't know at this point in time is what would have on staff to actually do this index. Unified School District I'd like to do some analysis and bring it back.

>> Councilmember Constant: I know this is a passionate issue. If we could bring it back in connection with Betsy and the legislative process we have.

>> Albert Balagso: Absolutely.

>> Councilmember Constant: Quick update to us to see if it's a place we should be going or whatever.

>> Mayor Reed: Anything else in the public record? Councilmember Pyle.

>> Councilmember Pyle: I agree that the office of aging needs to be added to the frequently called numbers. 10.1, we'll wait for that.

>> Mayor Reed: Motion to note and file the rest?

>> Councilmember Constant: Yes, sir, that is the motion.

>> Mayor Reed: All in favor opposed none opposed that's approved. Next item is appointment to boards commissions and committee. The first one is approve the reappointment of Paiman Komeilizadeh to the disability advisory commission. I don't know if I got the last name right.

>> Councilmember Pyle: You did.

>> Mayor Reed: And the other appointment --

>> Councilmember Constant: I make a motion.

>> Mayor Reed: We have a motion on both. All in favor, opposed, that's approved. Item 10, report on community based organization partnerships.

>> Thank you mayor, members of the committee. I'm here to talk about our work under the nonprofit strategic engagement platform, where the referral did recognize the value of working with nonprofits, community based organizations as partners in a delivery of key city services. It did also note the importance when we were working

with nonprofits that they are held accountable and that they are financially healthy, so the services actually do get delivered in a targeted, effective way. When they are in trouble and they are providing a strategic service it did note the importance of providing appropriate technical support. And it did direct us to come back and talk to the Rules Committee about the progress, activities and issues that we are facing along the way. I'm joined here with Leslye Krutko as well. Leslye and many of the directors that are involved in their department in providing nonprofits have been extremely helpful, and their staff, in putting together a lot of different products, deliverables, some of which are tangible, some of which are intangible that I'll talk about in just a moment. Current context is that for this current fiscal year we are providing \$33.4 million to a large number of nonprofits, there are about 365 nonprofit recipients in certain cases some nonprofits are receiving more than one grant. These grants are coming from multiple funding sources. You'll see this pie chart, you have handouts there, I know it's difficult for some people in the audience to see that. The top five funding sources which have remained relatively unchanged from last year to this year are HNVF, CDBG, the workforce investment act, General Fund and T.O.T. In aggregate this year they accounted for about 60% of the amount to nonprofits. Last year it was 67%. There has been a little bit of variation but relatively stable. In terms of CSA. You'll see the breakdown there. Again, the relative distribution is consistent over the last couple of years. There has been a livable variation in terms of percentages. For what 07-'08 was, and what you have here, Community and Economic Development it was 58%, 47% this year. It is 36% this year and 46% last year. In terms of working with nonprofits it is the case that when we are facing challenges and nonprofits are facing significant financing challenges, that is what we are left with in terms of remembering what our relationships were with nonprofits. But I think it's important the highlights the benefits of working with CBOs and nonprofits. The program delivery, the speed of implementation. As you know the other hat I wear is with Work2Future. Our ability to go to nonprofits and ask them to change their delivery mechanisms, their outreach and even their curriculum is much quicker than the for-profit contractors that we work with or community, speed of implementation responding to the need is important. Specialized skills in many instances relative to what the city has or other partner agencies may have, in many cases trusted by the community so actually the ability to access the community in targeted populations or underserved populations is important. I think one of the hidden benefits is the leveraging of city funds. They do bring in other funds and I think over the next year or so hopefully we can begin to quantify more to really demonstrate the value of the funding that is provided to nonprofits. Notwithstanding is these benefits we are aware of some of the challenges that nonprofits have faced, there was city council directs in April 2007, really, to not only bring back a set of guidelines for how special emergency funding should be allocated but really for how to deal with these and really at the heart of this was to develop an early warning system. I will be talking about that. When nonprofits are running into trouble typically it is an issue of governs and oversight, the need to develop internal financial controls, budgeting practices, issues of resource mobilization and diversification and the business model, changing demographics or the way the economy has changed in the last year or so. So it's really the whole initiative, the name of that initiative is a nonprofit strategic engagement platform. This is something that has been under design up until November, November we began to gradually roll it out. So really it has about six months under its belt. We are identifying still as kind of a pilot the first year, the products we are developing are putting out in the city and utilized with our nonprofit partners. I'll speak about those but we are six months into implementation. It is a citywide effort, to make more transparent the way we engage through our contracting process, engagement process and monitoring process. It does look and it is hard to increase the accountability of funding that we provide to community based organizations and at the same time it recognizes the needs to change our own policies and procedures to increase staff capacity and have more effective relationship with nonprofits. The way we're characterizing it is it creates a better ecosystem how the city relates to nonprofits and how nonprofits relate to the city. One of the key objectives is enhancing internal communication. This is one of these intangible products I made reference to so every month there is a team of directors, Sr. staff that gets together to discuss some of the challenges, specific challenges we are facing with our nonprofit partners. They also are looking at policies and strategic direction as to how we engage our nonprofits and there is another group of program managers, people working on HNVF, CDBG workforce, other program managers, they are working on nuts and bolts daily issues. For the director's review and their approval. One of the examples is in our grants manual we've developed a fraud, waste and abuse policy. That policy was actually developed and written by staff but it was brought to the directors for their review and their approval. The development of an early warning system, I will talk more about that, again kind of the spirit of that is to catch the one alarm fires before they become four alarm fires, I'll talk more about that in detail. The need to discuss staff policy, there is a particular area of need as it relates to financial review and audits so where there is a problem right in front of you you are able to detect that and deal with it accordingly. We do feel in the case where nonprofits, particularly those that are providing strategic services that may present a unique provider of that service, that when they run into problems, if we want to avoid the risk of interrupting that service, to provide

them with technical assistance. And we do have some partners that are working with us that are willing to provide at no cost to the city intensive assistance to nobody profits that may revolve around a business plan, developing financial controls, and we'll work with them over the long term to develop those products. But it is not the city that's providing the technical assistance necessarily or that's funding that. And I do think that one of the things that is kind of as the nonprofit strategic engagement platform kind of gets its feet under it, with the next cycle, with the director's group the nonprofit engagement committee, we will look to strengthen the linkage as it relates to city core services and priorities and begin to make sure that those two are aligning for obvious reasons. So I know there is a lot of interest around the whole issue of an early warning system and what does that really mean? Well, the first thing is, this was a long term earth, probably about a year and a half under its belt but it is now something that we began to roll out in November. It's the grants manual which not only looks at streamlining our policies and procedures as we are preparing contracts and entering into contracts and monitoring the nonprofits but it also prepares for a system as people go out and monitor how those issues get elevated within the department to the City Manager's office and so forth and are dealt accordingly. We are working on a similar situation now, Minon now is at key city facilities. There is also, we are about four months now into the design of a citywide grants management system. You will note in attachment 1 there is a listing of nonprofits and the grants that they receive, this is a very intensive manual effort right now. I want to recognize the good work of Colleen Arnold and a lot of other people in putting that together. Right now again it's about a three-week effort to pull that together from the different departments. We will see a significant degree of efficiency, better presentation of the information once we have an online data system which again we hope would be towards the beginning of calendar year 2010. I want to recognize Leslye Krutko's efforts here in kind of taking the lead and being involved in a funders collaborative that involves the city, the United way, funding many of the same agencies we fund. Also Patricia Gardner has been at the lease as well with the Silicon Valley association of nonprofits, the funders collaborative are looking at issues of trying to kind of streamline our application procedures, look at ways of improving the oversight of the nonprofits and doing so in a way where there's realtime information that is being shared. Keith Hart of the early warning system is here, which you'll see in the last bullet, a preliminary financial scan, probably a better word would be a pilot financial scan. For the first time we're trained in how to review financial statements, how to review audits. Then we turned around and per the city's response to the audit, that looked at community based organizations, we then did a financial scan of those grantees receiving \$200,000 or more. This was the first time of doing that financial scan, they were assisted by city management staff that did have that expertise and in certain cases by youths consultants. As a result of that financial scan corrective action has been developed, it is the departments that are responsible for implementing that corrective action and then to the City Manager's office. We will be providing technical support if need be. Some of the nonprofit technical assistance producers will be engaged to insist in the implementation of that and we will be providing ongoing reports back to the City Manager to appraise her of flog that area. We have provided training to the staff towards the end of last year in terms of the grants manual, we'll be doing similar training on the operation and maintenance manual when that's ready in about a month's time. We have done this one cohort of training with city staff, about 30 individuals on financial statements and audits. That is something we want to do obviously on a periodic basis to really increase the capacity of staff to do that. The city has purchased a tool called the QLBS organizational tool, that drills down and looks at issue of governance, budgetary practices, resource mobilization, it has a whole section based on asking questions to the nonprofit if they are providing operations and maintenance for city facilities, and it is a facilities dialogue between the board members and the senior and executive staff to make sure the board is engaged and aware that whatever issues and nonprofits are rising. In some cases the departments have now planned that the QLBS tool will be utilized, in a corrective action plan, to put everyone on the same base of information and to prioritize as they move forward with implementation. Also there is a rescission tool kit. Carey, you want to talk a little bit about that?

>> Good afternoon my name is Carey Adams Hepner. This is a recession tool kit for arts organizations. We feel we are in unprecedented times. These are very challenging economic times particularly of our arts nonprofit sector. So as a result we developed a multiprong approach to looking at building the capacity and sustaining the organizational effectiveness of our nonprofit arts partners. The first prong is a nonprofit facilitation class, by Compass Point, a Bay Area service provider. This is the same class that the city staff has already been through. It's very good. It's an abbreviated class 12 hours long. We have invited the executive leadership as well as the board leadership of our nonprofit board to participate. They are encouraged to continue their individual work with Compass Point. Our second strategy is the recruitment of organizational assessment consultants that can do in-depth work with our nonprofit arts providers. We know in 2006 we had several arts organizations that were in severe fiscal crisis that came to the city to seek lines of credit through our art stabilization loan fund. And

the purpose of these organizational assessments is to keep arts organizations from seeking these lines of credit and to prevent them from falling into the art stabilization loan fund. And to keep them from going dark or closing their doors or falling into bankruptcy. So the assessments will look at the environment around the operating -- operations of the nonprofits, it will also look at their organizational structure, as well as their business model, and identify areas for corrective action. Our third strategy is nonprofit art sector convenings. We are currently conducting some conversations with our partner agencies as funders and looking what are the issues involved in sustaining our sector through the next several years? So we're looking at the types of qualities that are going to be required such as leadership to sustain our arts organizations. And then finally our fourth strategy is our participation in the arts loan fund. And the arts loan fund is a fund that is administered by the Northern California grants association, a loan organization that provides emergency funding in the form of bridge loan funds as well as area funds that will sustain them through their next payment such as a grant and so forth. So to combine we're hoping that this multipronged approach will help sustain our art organizations over the next several years and provide tools and resources for them.

>> Thanks Carrie. I think we're all looking forward to the implementation of the arts organization. That is more than just a database. It will be an opportunity for nonprofits to apply online for grants. Once those grants are received and the applications will be held online, the scope can be basically taken and put into a contract, once the contracts are let, the system will provide for a back-end system so that we go and monitor, there will be kind of a reminder system both to the nonprofits and the city staff that reports are due back from or responses are due back from the nonprofits. So it's going to be a real time management system in terms of our grants. And I want to thank parks and rec and Albert and Jay and Andrew freeman for the spirit of doing more with less in terms of taking the lead and putting that back together. We will continue to do staff training. We will increase the frequency of our oversight and we are currently moving forward with implementation of the corrective action based on the financial scan that I mentioned and I think that there is basic consensus notwithstanding the workload implications that though the City's response to the CBO audit that we would do financial scans and reviews of those nonprofits receiving \$200,000 or more, we believe coming back to the challenging times, that it is prudent Carey believes to turn it down to \$100,000 or more, and we would decide how to disseminate that to the council and to the public. You wanted to add something to that.

>> Leslye Krutko: I think it's really important as our message to understand the importance of the nonprofit sector as a partner in what we do. We can cannot do everything to provide services to our citizens, and we have a lot of very, very successful nonprofits that are helping us to do our work. And I wanted to make sure we recognize that. I also think it's really important to recognize what Carey mentioned which is how tough a time this is for nonprofits. We know it's tough for us and we are going to be talking a lot about our own budget. But nonprofits are seeing reduced funding from all different sources including government. And that's going to be creating I think situations where, going forward, we are going to see more nonprofits that are having to make tougher decisions that may include cutting staff or cutting services to our population. I also wanted to say a lot of really good work is done to date and I really thank Jeff for his leadership in getting us to where we are. And a lot of that work has really strengthened our internal response in making sure that we know all of the grants we have and how much money and that we're coordinating with each other and that we have systems in place to appropriately monitor city resources. But I think it's also important to understand that we are a partner in this, as well, and that some of the processes that we put in place may be counterproductive to efficiency. That is what the collaboration is working on, making it easier for us as well as the nonprofit. And just to give an example of one effort that's going on with the larger funders group is looking at outcome and evaluation systems. Right now, a nonprofit for the exact same service may have five different funders who all have different outcomes measures, not to mention the fact they all have different contracts and different application processes and everything, but different expectations for what will come out of that grant for the same exact activity. And then they all go out and monitor. That just takes a lot of staff time both on behalf of the funders and for the nonprofit to respond. So we're really working to see what we can do together. I really think that's the next area we need to work a lot on. The other point I wanted to make, and it's something that's in its infancy now. We are looking in an analytical framework of when we intervene. When there are some nonprofits that maybe, for one reason or another, cannot continue or need to merge, or feed to really change, and we need to make a concerted decision on whether or not the city wants to provide that technical assistance and wants to provide any financial assistance or anything else. And a lot of that, you know, a lot of questions need to be asked. And we're developing a framework to do that, help make that decision. And I think lastly I did want to talk to the dissemination of information. And that we have -- we want to make sure before we disseminate any information that we are very comfortable with what we have. Jeff

mentioned that our staff right now is just learning financial information, how to read and understand how nonprofits are doing, and we want to make sure that when we release information that it's accurate, and professional. And that's something we're going to be working on, that by next fall we would be able to provide that kind of information going forward. But that's something that I'm concerned about before we release any information that we make sure we're happy with them, we think it's correct.

>> Mayor, that's the end of our presentation.

>> Mayor Reed: Okay, thank you. I have one card from the public to speak on this item, Patricia Gardner. Patricia, I'll give you your two minutes now, but I'm going to have some comments and questions, I'll probably want to hear from you then.

>> I'm not quite that tall, thanks again for taking this on. We really appreciate the City's leadership in making some improvements to nonprofits. Since I won't go over everything I did put it in writing, I just want to hit on a few points. I want to thank Jeff Ruster and Colleen Arnold and other things here today. I really appreciate their work. Here are the highlights from where I stand. Our contracts are getting signed on time. Therefore we're getting paid on time. That's a really big deal for us.

>> Mayor Reed: That's a good thing.

>> Yes. The grants manual is a great step forward in developing some commonalities. The city engaging the training of staff in understanding how to read financial management. We were pointed down because they didn't read the audit correctly, that's going to correct that issue. I'm going to echo the funders collaborative. Both Leslye and I co-chair that together. I don't think we've mentioned who was in there, Santa Clara County, social services housing and CDBG departments and health and hospital systems, the Packard foundation, Silicon Valley community foundation, Kaiser, the health trust, applied materials and first five. We've made some breakthroughs. We need improvement in the RFP and allocation process, particularly in HNVF and CDBG. I'm going to continue to ask for a contractor training where a City Attorney comes out and explains what it means to contract with the city, what are all the rules and requirements. I'm going to continue to ask for that. I know that this year is not a good time for cola but we have to at least in our minds know that we're going to get better and how is that going to be integrated into the process. And more attention into the early warning system as Jeff talked about. And I think there needs to be sunshine rule and how we do the early warning system and the 200,000 way before you go down to the 100,000, let's get it right this time. QBLS form, the City Auditor goes in and does their thing and they think well maybe we should have used QBLS. That needs to be the end partial review, not one person that says you do it right or not. You get checks, it is very unbiased so I think that needs to really happen. And then I've provided the report on the trends in the nonprofit sectors and I'm going to give you the highlights. 51% of our agencies are planning layoffs, 64% of them will have cuts from the government sector. Client need is up 20%, but it's up 35% in emergency need of shelter, food and housing. 35%. We expect that to hit 50% by the time we get to curricula. We are seeing immediate downsizing in local philanthropy with 39% reporting a substantial decrease. Government cuts in alcohol and drug, mental health that are happening at the county, you're going to see the impact here at the city with an increased homeless population and a increase of need for police calls. Only 7% of our nonprofits are saying they are financially strong. So we need to have some understanding that we're going to have some issues because we're all having issues. And I think that Leslye and Jeff have the right mentality, have the right thought process about a partnership, and the collaboration. Things are going to get tough. We all want to provide our service first. Our heart is there. And so sometimes we make other choices, because we really want to serve our clients. And we're working with them and you're working with them. But when you see an increased client need of 30 to 50% over last year we all have to look at that and see how we get that food out of the door and you know what? We might not get that paperwork signed on time. So we want to have some understanding that that might happen because with somebody standing there asking for food but you know you have to have a report due to the city, what choice should they make? We have to be looking at that, as we look at deadlines might not be met and things like that and I think Jeff understands that. I think they're doing a great job, the sector is also hurting as you are and I think there's more that we need to do but at least we're working in the right depreciation so thanks.

>> Mayor Reed: Thank you. I'll ask you to come back for a few minutes after the committee has had a chance to talk about it. Lisa Herrick happens to be here and I have a Sunshine Reform Task Force question. And that is part

of the referral to the staff had to do with the recommendation from the Sunshine Reform Task Force that we get these contracts into a system, to review in a public way, and get them out in the public review. And Jeff and Leslye didn't really address that part of it but I think that fits into that recommendation.

>> Leslye Krutko: I'll start and pass it on to Lisa. That's something I've been working on. The majority of what we call nongovernmental bodies under sunshine are not the same bodies that we're talking about. In fact I compared the two lists. There is only five that are on both lists. The -- so that's a big question for us because we're not doing this kind of financial scan on these other groups. The -- it's because of the definition that the sunshine committee had come up with. And this is something we are planning on coming forward to the Rules Committee on separately. But for the most part, a nongovernmental body was defined as a contractor that operates or fully maintains a community center, or a city facility, with a value over \$5 million, and secondly, a contractor that receives funding of 200,000 or more for specific direct services, police, fire, sewage treatment, garbage collection street maintenance and library. So it actually captures a large percentage of for profits, not nonprofits. And it captures like I said only five of the nonprofits that receive over 200,000. I'm not sure how you reconcile that but it's quite different. I'm not sure from a legal perspective we have to talk about what's releasable for a for-profit rather than nonprofit, for financial information. It is something we are dealing with in another context as well.

>> Lisa Herrick: Lisa Herrick. The only thing I'll add is that the issue of nongovernmental bodies as not fallen off the staff's plate, who are dealing with Sunshine Reform Task Force recommendations. It is something that we have talked about and intend to sort of circle back before we finish phase 2 with the relies committee. And our intent is to work with Leslye and Jeff, and determine what to do next. It is something that hasn't fallen off our plate and we will be dealing with NGBs at some point.

>> Mayor Reed: If you have nongovernmental bodies and these folks are not there, what should we do with these agencies in terms of the public nature of the work that we do? And how does the council get informed in the cases where there's an organization that the staff thinks doesn't have the capacity to do what it is, you know, they propose? I remember when I was on CDBG committee, there was a financial capacity analysis part of it, because what I'm trying to figure out is, one, how to let the public in on this, and two, make sure the council knows what's going on when we make a funding decision for a nonprofit organization that ultimately goes in the tank sometime during the year. And how do we use this information? How do they bring it forward? I know that's on your list for next year.

>> Leslye Krutko: I think it's one of the things we need to work on. What is challenging for us is the nature of these contracts. We have these contracts that fall into the categories where it's for things like to pay goodwill for extra garbage that people dump off. So it's not a service. It's merely paying them for something they have to pay. We have others that are services, that are ongoing services, we have others that are not services, that are one time equipment purchased for example. And I really think we need to consider the differences again them. It really is the operator grants that in operating assistance, there's a concern because there if we stop funding it then that activity stops as opposed to more one-time function.

>> Mayor Reed: And how much of them are reimbursements versus money upfront? I'm less concerned about the reimbursements, they don't get to move forward.

>> Also the financial scan was based on audited financial statements. In alternative cases those statements were nine months old. So one of the things that we'll be incorporating into the new contracts is a request for interim financials so we can have the most recent timely information to make appropriate decisions. Because again in the best cases those statements will be 60 days out of date.

>> Leslye Krutko: If I can get back to you, when we get back on nongovernmental organizations, it is capturing some of our garbage companies and some of our utilities companies that ordinarily we would not provide this kind of information for.

>> Mayor Reed: One of the things that council has asked a couple of times when we were in the middle of giving people additional money, because they were in trouble, but we get their financial statements posted on. Do we require that? Do they do that? Would that be helpful? I'm still focused on letting the public in on this information.

>> So we are tracking through the grants management working group up through the nonprofit strategic engagement committee to make sure that all departments are following up on that requirement. Right now we are not in 100% compliance with that but this is something that is every month we're coming back kind of showing folks who are the nonprofits that we still need to secure the financial statements for. So it's something that is at the top of our list right now. We do think it's helpful I mean just in terms of getting the information out.

>> Mayor Reed: The other question that I know is a problem is, what do you do when you find bad news? You can't just sit on it. But you also don't necessarily want to issue a press release. And how do we handle the bad news when you have a financial scan, you find something that's bad, what do you do when you find out one of our vendors is under investigation by another financial circumstance?

>> The reaction is being able to react in a timely way, hopefully we will be finding out that bad news before it is a four alarm fire, we could address that with any corrective action that we would be able to track and to have a nonprofit instrument, like those I will mention will help a lot in terms of trying to rectify the situation, again issues of resource mobilization, tend to be the kind of things that are plaguing the organizations. I think having all the directors and all the program staff together, because quite often, the larger nonprofits are being funded by multiple departments, so that there's a coordinated set of interventions, of one voice in terms of how we're going to treat these issues. I think all those in the aggregate add to a more effective response. Again, with the economy the way it is, though, some of these nonprofits are facing financial problems. I mean I think even the auditor's office has mentioned that they would not be surprised that a lot of these nonprofits in light of what's going on and funding challenges are not facing reality. Early on in the implementation the platform we are getting kind of a management grew as the City Manager would say, we are aware of where those resources are and directing in dealing with it.

>> Leslye Krutko: I think it's different for every situation so it's hard to have a complete cookie cutter approach. We have situations like we have with emergency housing consortium which took about a 24 month process, multiple agencies to help work that out, multiple issues to work out, and then we have some that are much simpler where it merely is a one time loss of a -- of some funding and we need to figure out how they're going to address that problem. And then everything in between. So that's what's important about the process we're going through is we are looking at and developing corrective action plan for each nonprofit based on their individual concerns. And since so many of mine deal with real estate, whenever real estate's involved it becomes a much more complicated work-out.

>> Mayor Reed: We're going to make about I think \$36 million worth of decisions in the next two months in the budget process for all of these, for annual decisions, whether it's General Fund, CDBG, Healthy Neighborhood Venture Fund or whatever. And I'm still trying to figure out how not to appropriate money on July 1st and have somebody fail on August 1st taking our money with them. Because we've had that happen, and council needs to have the information when we're making the budget decisions so that we can assess that risk and decide to take the risk. Patricia might have something to add to that.

>> I want to address all your questions. On the sunshine issue since I was involved in that I'm still confused. My understanding was any organization that received over \$200,000 from the city would have to report annually to a committee. I'm going to say that still needs to happen. I was part of that committee, I think that's good sunshine not only for the public and the council but I think you also have a problem making every department know. I think one department has a good financial score and another department thinks they have a problem. I'm going to still ask for that. The interim financials that's not always the answer because cash flow has an issue so we need to look at that, the financial issues online. And we also don't want to have duplication. We have guidestar.com, that already posts this stuff. So why do we have to post it in more than one place. I know our funder collaborator is already looking at that. How to handle the bad news? There's bad news and there's good services. So cash flow is an impact. Just like the state didn't pay you, it didn't pay us. School districts didn't get paid, they didn't pay us. It impacts any school service, any health care service, any childcare service. When you're not paid for three to six months, you know you're going to have a problem. So we have to have an understanding here that it is not all this black and white issue around financials and I know you do understand that. So there's bad news and then there's good services. So when it's good news and bad services that's when you really have a problem. But they're not so equally, well you know, we didn't get paid. And so that's going to impact our cash flow. So we have to look at that. But I'm going to keep asking for that over 200,000 annual report. Their finances have to be on not only for

the council but the public. I think the other funders because I'm going from meeting to meeting. If they have a problem here they're also being funded here and here and here and don't we all need to know that to work to have a resolution to that? So I'm going to keep asking on that.

>> Mayor Reed: Thank you. Pete.

>> Councilmember Constant: Mayor, just following up on some of your comments. Long the vein of getting information out and letting people know. I think one of the things that's key, to be able to really answer to all the taxpayers out there and all the residents, is getting two pieces of information that I know when I'm asked I feel like I don't have the answer to give them. And that is, how does the money that we're giving away relieve us of some obligation or some cost? And when we're doing that, how can we demonstrate it's a good investment? What's the leverage to that dollar? So if someone questions why did you give money to ABC, Inc, I would like to say we gave them a dollar because it saved us \$5 and they matched our dollars or leveraged our dollar to give \$8 in services. That's a tangible answer I can give someone because there are people that get real upset because they say you're giving away \$30 million, why? And I think that's a reasonable question for us to ask because we know that the Feds and the state and the county and everyone else are drying up their pools of money but all the burden can't fall on the city government to provide for services that someone else should be supplementing or providing. So I think it would be so much easier if we could have that question answered. What is it doing, how is it benefiting the City of San José by relieving us of a duty? Around I think that's a key question that we should have answered. Then as far as the grants database, I know we mentioned and we talked about this before but getting consistency to the naming and making sure that you don't have to find people on five different pages to make sure they have grants and make sure it's effective. I would also like to see the council grants really delineated on what are council grants and what are office grants. HP grants really aren't General Fund money, they are restricted money that we can only use for specific purposes. And I don't think we need to go back and redo this but as we go into the grants management software having that delineation would be good. And I had another one but I didn't write it down. I'm sure it will come back to me at some point.

>> Councilmember what I would say in terms of your first point in terms of the service obligations and the leveraging of the funds, the reference we made in our presentation to making sure that the funding that we are providing in the community based organizations are linked to a core service of the city and understanding the leveraging we're getting as well I think that's one of the key deliverables that we're looking for to move the platform forward over the next year.

>> Councilmember Constant: Also the information in these, in the appendix, I had noticed one in my office where it had actually been denied where it was never given. So I would like to just make sure that when we're making lists like this it's only once we've actually given the money. You know, the money's really encumbered vs. applied for because that can show a different picture as well.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you. There is two items and actually one fits in with Councilmember Constant's remarks. I agree, if you can maintain a consistent name, I can only think of three examples. BOSSE, East valley YMCA and YMCA East valley branch, it would put it in two different parts, friends of Guadalupe river, three or four different ways, friends of Guadalupe river, friends of Guadalupe river, friends of Guadalupe river park and gardens. It is a consistency matter.

>> When the grants system comes online, this went through extensive scrubbing. But it is all manual. It is information generated 50 departments that we rolled up, quality controlled and put back forward in various forms.

>> Councilmember Pyle: And it will get easier as you go, we hope. I did want to say, remark on the amount of work that's gone through this. Congratulations to you. The amount of work that the nonprofits do which we could never afford, we would be in dire straits. We would have more people on the street, more people jumping out of windows, just kidding about that. It would be pretty dismal and I truly appreciate all the work that they do and appreciate the fact that we're trying to do our best to supplement what it is that they're doing. So thank you for putting it on a track that makes sense to everyone.

>> It's been a good team effort.

>> Mayor Reed: Well first let me thank you for the report, the appendix, list of grantees receiving reports. Obviously data generates the request for more data and reordering the data, and so that's good, that's good thing to have spreadsheet in electronic format. There are ways this could be improved, no doubt about it. But if I have an idea of the magnitude of the grants is very helpful. When you redo the database you put in ultimately subtotals to figure out by organization where they are in the lineup so you know what the top ones are, that would be helpful. But this is very good. I know it took a lot of work. I can only imagine all these grants and all these departments and all these agencies how difficult it was to get there. I want to go back to how we take this as well as the nongovernmental organization stuff for the Sunshine Reform Task Force. I agree with Patricia Gardner that at least I want to get this information, at least the larger ones into a public process and bringing them through committees somehow for an annual report or an annual scan or an annual something ought to be where we would start, and appendix 2 they're divided up by CSAs and those each pretty much match our committee process. So I could see us adding to the committee work plans, an annual report or some sort of an annual thing, for the big ones. However they may be defined. I think the Sunshine Reform Task Force was \$250,000 and above or maybe it was \$200,000 or above. But just to get started with the big ones so that they get a public review of whatever it is, would be helpful. I assume these organizations are doing some sort of accounting for the work that they do. There's got to be some report that gets done and brought to the staff in some fashion so they, just in pure contract compliance so that we know that they've done their contract. And I think if those reports, whether it's the annual financial report, or the audited financial report, or something, comes through as an annual report to a committee, that would go a long ways. Without generating necessarily a whole staff report and staff analysis, is that next week on the transportation and environment committee there will be a report from this organization. Or the committee to look at, discuss, and ask questions about. As opposed to staff has to do the workup and put it on the committee agenda. To try to minimize the amount of work but to maximize the opportunity for the public to know what's going on. Pete.

>> Councilmember Constant: Just one more comment as it relates to appendix 2. When we had the three year structural budget deficit task force, the word core service is so misleading. Because when you think, when the common person thinks core, they think essential, something that must be done. And we know the City of San José, every single thing we do we call it core service. And I think as we go forward, especially when we're really having tight budget times, we need to start thinking in terms of essentially city services and nonessential city services. And that kind of goes back to what I said earlier with the -- what does it relieve us of doing? Because as we make these decisions, especially the tough decisions of what we're going to stop doing, I think it's really important to be able to look at them and say, are these things we must do because we're mandated to do it, are they things we would like to do, and there's a big distinctions in those categories. And then of course my favorite is things we should just not do. And I think those four things we really need to ask ourselves and when we go through the budget process and we look at this if we only talk about core service to put it in a column I think we do a disservice to the taxpayers.

>> Mayor Reed: I had one more question, guidestar, Patricia mentioned that. I think guidestar only posted the 990s. Are they only doing audited financial reports on there? How much information is available to the public?

>> Guidestar has just been revised. We are reporting out at the funders collaborative on guidestar at that time next meeting. It's got more board governance information, more policies, and it requires your audit, I had to post that, and what was the other question?

>> Mayor Reed: Was that public information?

>> Yes, guidestar.com. Go look up anybody on -- well we ask all our agencies be posted on guidestar.com. We'd like that to be a requirement. We don't want double-posting and double-printing. If it's online, you don't need to all be asking for it again. So we're looking at how we can use guidestar.com as a tool across all kinds of funding entities because you don't need the file space, either. So we're looking at it.

>> Mayor Reed: Okay. One last thing as we go through the budget process with CDBG HNVF, General Fund, et cetera, as we go through that process we need to figure out a way for the staff to communicate the bad news. So that you're not having to sit on something that really should be made available to the council. And you're

concerned about making sure you've got accurate information or right information, I agree with that but somehow in this budget process, staff needs to have the room to be able to say the bad news without people being angry at the messenger. I don't know how we do that but I think I'll leave that for the staff to look at.

>> We did put out as one of the options in correction action, the ability to rex termination of the agreement. We came in with the City Manager's office, we've met with Debra where there are nonprofits due to a variety of reasons are facing financial challenges, we sat down with Debra and the department heads to go through corrective action. That has not led except in one particular decision to a termination agreement. Not based on a financial decision but going back to the framework that Leslye mentioned, was this a unique service provider and was it linked to a strategic service to the community?

>> Leslye Krutko: I think I'd add, not all of these are handled through the budget process, we have them on different schedules. So CDBG, for example you're looking at on May 5th. We are not bringing forward a recommendation for a nonprofit that is in trouble. We look at the audits. If there is a nonprofit that has trouble, we are noting that, and indicating the need for corrective action. But that's something that we would be forthcoming with council about, and the only reason why we would ever do that is, if it's a nonprofit that we felt we could save, and that was core to the mission and there was not another nonprofit that could take over that responsibility. So but then we would be forthcoming though with the council that this is a problem and there's a corrective action.

>> Mayor Reed: Okay. The last thing we have is, when we come back with Sunshine Reform Task Force on nongovernmental bodies, I'd like to continue this and how much they apply to nonprofits and how big they are whether we do it with some but not all.

>> Leslye Krutko: I think we'd be happy to do that and we'll be able to compile the whole list much what it might look like. I think some of our struggle with this has to do with agencies that are on there that as I said are the multistate bigger agencies and less though with the nonprofits we work with.

>> Mayor Reed: Okay.

>> Councilmember Constant: Rick, just a quick question. Are you aware of a situation I think it was with Princeton university, the lawsuit with grants and expenditure of grant money? I'm not sure of all the details, but it had something to do with what the grant was supposed to be for and what it ended up getting used for. Does your office know anything about that?

>> City Attorney Doyle: Yes, and that's something that's come up before and I think it had to do with whether or not there were obligations on the part of the university to make sure it was properly expended. It's a little bit different situation but you know if the council wants us to address that because it's come up in different contexts before.

>> Councilmember Constant: I don't know a lot about it, I just heard about it but I think it may merit looking at to see if there are lessons learned as we are getting through our changes and whether it is something we implement with the database system to make sure we're checking and double-checking and whatever, I think that would be of benefit.

>> City Attorney Doyle: And there's something I think to just piggyback on what Patricia Gardner said meeting with my staff and members of the nonprofit community to talk about the consequences of the contract. That goes for the board members as well. Definitely they have their own attorneys that are available to them but contracting with the city what it means and what the City's expectations are I think that's an important thing that we can do.

>> Mayor Reed: I'd just like to add, we're going to get a lot of grants from the federal government on the stimulus stuff, lot of oversight issues there, that will be just another reason to know what's going on with our nonprofits who may be in contract with us to deliver some of those services, and other kind of different oversight, again, yet another requirement for the same nonprofit to do things. But it is -- it's money coming from the federal government so we've got to do it the way they want it. Anything else on this? And do we need to take some kind of action here other than accepting the report?

>> Councilmember Constant: Motion to accept.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion is to accept the report. Are you planning on presenting this to the council or is it still too early?

>> Certainly if you'd like us to. I mean did we have any plans? I think we were bringing it here but you know I think it is of interest to the entire council. You can cross-reference it if you'd like.

>> Mayor Reed: Why don't you think about that. We've got a bis council schedule over the next couple of months. Maybe it's something that can come to council in August or something. At some point it's got to get to the council because there's a lot of interest on this. We've been working on it a long time. Motion is to accept the report. All in favor, opposed, none opposed, that's done. Thank you very much. And I thank Silicon Valley Council of Nonprofits especially for being engaged with us on this issue. Item 10.2 is the proposed lobbyist ordinance amendments, memos from Councilmember Campos and Chu. Asking for amendments to the city lobbyist ordinance. Those memos have been circulated. I'd like to suggest that we refer those to the biennial ethics review, there are lobbyist issues referred to that process which we've talked about here, Sunshine Reform Task Force and elections commission issues. So we're already into it so I think that's the place to take that up, all the lobbyist stuff ought to be looked at at one time.

>> Councilmember Constant: I agree, mayor. And if -- you know if there's any other pending or lurking depending how you look at it out there, knowing when would be the last time we should get it in so it could be incorporated in that review so we can -- I don't even know when it is.

>> City Attorney Doyle: It is a biennial review and usually it takes place in the fall.

>> Mayor Reed: Usually do it in the fall. Two years ago I did. I'm going to do a memo inviting people who have those ideas, we haven't figured out what the schedule is so there's no deadline for last. But typically it's going to be likely be in September getting together with a review panel, we did it in here last time. There's time still. We'll do another memo as we get some kind of a schedule.

>> Councilmember Constant: Okay, I can make the discussion.

>> Councilmember Pyle: Make the motion and discuss, sure, I'll second it.

>> Mayor Reed: All right.

>> Councilmember Pyle: I just wanted to say that I would not want to, in the meantime, between now and when we have the biennial review, as far as penalties or any of the rest. Also, I think somewhere along the line it needs to come to council. So are you suggesting that after the review or --

>> City Attorney Doyle: Well, the city charter requires that the mayor present to the council a biennial review of the ethics, that's anything from resolving door to gifts to campaign regulations, typically it is in the fall of every year that does come forward and I think that the suggestion is that that would be part of this process to look at this. I will note that we do have regulations in place and the city has -- has always had civil fines as the remedy and not criminal personalities and the proposal is whether or not we should have criminal penalties on top. The fines can go up to \$5,000 per violation and that's determined by the elections commission. So that's something that there are potentially stiff fines, it's a question of you know, the issue, and there's case-by-case.

>> Mayor Reed: Didn't we also allow the elections commission to assess a fine equal to the amount of the fee?

>> City Attorney Doyle: That is the case particularly when those fees are exorbitant, the commission could look at those as well.

>> Councilmember Pyle: Do we have any outstanding situations where it's in debate?

>> City Attorney Doyle: You mean any violations?

>> Councilmember Pyle: Yes.

>> City Attorney Doyle: Well, tomorrow there is a hearing on the McEnery family and the urban market lobbying issue and that's going to the elections commission. There is a report that is complete and they'll take that up tomorrow.

>> Councilmember Pyle: Okay, thank you.

>> Mayor Reed: Just to tie up the discussion of the biennial ethics review, I'll bring it to the council probably November. I think last time we got it to the council in December, probably so November or December typically but it would come to the council, my recommendations based on the review. I'll have a community panel and a public discussion, so if there are any issues people can bring them up.

>> City Attorney Doyle: Mr. Mayor I will note the one thing. Elections commission, also and Lisa is here, she staffs the elections commission. They are looking independently at recommendations as well to the ethics provisions and the code various provisions. One of those will be independent expenditures and we may be bringing that back prior to the review just because of the elections cycle for next year.

>> Mayor Reed: Much better to have that earlier rather than later.

>> Lee Price: And I'd just like to mention that you've already received a referral Mr. Mayor from the electrics commission relative to the lobbyist ordinance as it relates to the disclosure of independence expenditures and other fundraising activities by lobbyists. That is another item that is already on your plate.

>> Mayor Reed: Right, that was the 48-hour reporting requirement recommendation.

>> Lee Price: Yes, yes.

>> Mayor Reed: Anything else, Lisa?

>> Lisa Herrick: No, everyone's covered it thank you.

>> Mayor Reed: So we have a motion to refer that to biennial ethics arrive. All in favor, opposed, that's approved. Next item on the agenda is 12.3, that's a letter of appeal from Martha O'Connell and A.E. Liz Warren. Homeowners, organized to maintain equity. Liz Warren is here, would you like to speak?

>> That O'Connell representing HOME. HOME needs to go on record, did we ever request to observe interviews for the senior commission, only the MAC. The project diversity paperwork for the MAC. We have written to you "we plan to meet with Councilmember Chu and made a formal request to do so. In order to present an informed argument to him we need access to this paperwork before the critical decision is made. HOME's request to see the projects diversity paperwork is reasonable and in the public interest. What the City Clerk characterizes as subjecting council liaisons to outside pressures is a specious argument. Any time the citizen meets with a councilperson to request their support for an issue, that could then be characterized by the City Clerk as subjecting a councilperson to outside pressure. This is a democracy. Council persons should be considering the thoughts and desires of every persons without making any decision. That is not outside pressure. This is what transparent government is about. There is no advantage to withholding these documents while withholding them is a disadvantage to the public. Although Councilmember Chu is not such a weak reed, these documents are weekly disclosed, therefore this disclosure does not interfere with the deliberative process but enhances it. In summary, sorry, to disclose the paperwork on all the applicants to the MAC hardly gives at the City Clerk claims some candidates an unfair advantage or disadvantage. If the records are released for everyone, then the playing field is equal. In summary, the release of these records is in the public interest, since it will give stakeholders the chance to make an informed case to the council liaison. The quote the City Clerk in her 2008 report to the council, "it is essential that recruitment of citizens to the City's board and commissions be open and inclusive. I ask you

today to make those words of reality. Final comment, Mayor Reed, on 4-15 you stated, "we've been at this for a year and we've not had a single person bring one of these issues to the Rules Committee for discussion. I am that person. Attorney Chadwick replied to you, "I don't know why they would bother. I mean you're asking the agency that is essentially responsible for denying your request to reconsider the denial of your request. I know you treasure a sense of your independence but from out there there is no faith in that independence. I think the public's perception is and will continue to be that Rules would defer to staff." Now is your chance to make open and transparent government a reality and to prove that Mr. Chadwick is mistaken in this instance.

>> Mayor Reed: Anyone else want to speak on this item? We have a memorandum from the clerk after consulting with the City Attorney, do you want to speak on it?

>> Lee Price: Sure, thank you Mr. Mayor. Ms. O'Connell has made numerous requests so we attempted in the supplemental to address all of them on the requests of the project diversity screening committee to consider a number of openings on a variety of boards and commissions. As you know this is a process we do twice a year. The request came in to review the documentation that the project diversity screening committee uses and develops as a part of their screening process during the interviews. And so the reason for denying the request was that the process itself had not completed. The project diversity screening committee process has been in place since 1991. They break up into subcommittees, and those subcommittees are less than a quorum of the committee as a whole. They are not considered Brown Act committees if you will. The information that the committees develop and we process and forward onto the council liaison is typically kept confidential until the council liaisons have had the opportunity to review the information and then provide to the Rules Committee a nomination. There is opportunity for the public to make comment regarding the nomination, and that is before you as the Rules Committee and/or before the city council before those appointments are ratified. And I'll take any more questions you may have.

>> Mayor Reed: Is that clear to me what the paperwork is? I remember seeing the application form that people fill out. What paperwork is there beyond the application form that might be in question here?

>> Lee Price: Thank you for the question. Yes, the applications of course are what the citizens submit, and Ms. O'Connell has been given the opportunity to review the applications. The other paperwork are the committee's questions that they use, and this year, we did use a process by which we asked staff to provide some good supplemental questions, specific to the boards or commissions, to help the project diversity screening committee have questions that were relative and useful and helpful to their screening process. And then they also have a rating sheet that they -- the subcommittee uses to assess the skills and expertise and qualifications of the applicant. And those screening evaluation sheets if you will are forwarded to the council liaisons for your use to make decision about whom you'd like to nominate for the various boards and commissions. So it's that information that Ms. O'Connell had requested and that I denied or at least trailer denied until after the process was complete and then that information would become public and we would make it available to her and anyone else who -- anyone else who asks for it.

>> Mayor Reed: Do the applicants have an expectation of privacy for what they submit? Or is that subject to redaction of address and phone number, personal information kinds of things?

>> City Attorney Doyle: I think their applications are public. There is no expectation of privacy for the applications they fill out for the commission or the committee. That is public for the committee. It is the expectation of the committee in terms of the committee, their working papers and the recommendations and the workup they will do in recommendation to the council liaison. And then the council liaison makes a determination as to who he or she will recommend. This is not a question of this is not a public record. It is a question of at what point is it to be released? If I could use an analogy, the City Manager's office and their departments go through analysis all the time. The evaluation are generally confidential until they get through the process, and then it goes to the department head to make a recommendation to the council. It's at the point it gets to the council that all that paperwork can be subject to discovery or release under the public records act and then the citizens have a right to then come in and then they can go talk to either the staffers, in this case the liaison who made the recommendation and/or the Rules Committee members and say here are the concerns we have and then ultimately the council who will make the final decision. So I think it really gets down to, the concern on the part of the City Clerk is, you have a process in place, and so as to allow the process to, and people to have the free

discussion and interviewing, let them keep their notes and not chill the process, at the point they make the recommendation then everything is public and decisions have not been made. Recommendations are being made, but it's very much similar to what we've seen in the RFP process.

>> Councilmember Pyle: So there is recourse, it isn't as if anyone is being denied, there is recourse.

>> Mayor Reed: Back to the timing issue. Ms. McConnell, you can come back up to the microphone?

>> The point on the timing is that we have a May 8th appointment with councilperson Chu. We're going in there with our hands tied behind our back because we don't know what project diversity said.

>> Mayor Reed: Let me stop through.

>> I thought you were asking me --

>> Mayor Reed: I was, I just wanted to clarify on the timing. On May 8th will Councilmember Chu know what project diversity screening committee recommended?

>> Lee Price: Yes, the council office as of just yesterday, actually just this morning, received the information from the project diversity screening committee. So council offices are now in the process of looking that over, looking at the applications, and going through their own internal process about making determinations and nominations.

>> Mayor Reed: So at the end of the process are all of those recommendations then made public?

>> Lee Price: Yes. Well, the council office will make recommendations to the are Rules and Open Government Committee. Those get noticed. They're on your agenda.

>> Mayor Reed: What about the other candidates, the other recommendations? There are ten people screened, one opening, one recommendation. What actually is made public of the 10?

>> Lee Price: Generally, we don't put all that information in the packet. But it is public. And so it's available upon request.

>> City Attorney Doyle: I don't think we've had a request but when -- if we do get a request like we have here I can't think of a reason why it wouldn't all be turned over.

>> Mayor Reed: The question is back to timing, back to the RFP. The public finds out the staff's recommendation on RFP the same time the council does. So I'm having a little problem with saying this can't be disclosed to be public when the councilmembers have been given it. And are evaluating it before they make a decision, why shouldn't the public not at that point?

>> City Attorney Doyle: And that's the question, but the analogy I'm using the Councilmember Chu is really in a similar position that the City Manager would be in, that the recommendation comes from the staff level, or the committee on the RFP makes a recommendation to the person making the recommendation to the council. In this case Councilmember Chu's making the recommendation to the Rules Committee and the council. It really gets down to, you ask me the question, could Councilmember Chu turn the documents over if he decided to? He's got them, I don't know what would stop him. It's the question that the City Clerk is just following a protocol that it generally doesn't become turned over to the public until the point in time that the recommendation is being made. Because the paperwork is still being worked on.

>> Mayor Reed: Except the difference is, Councilmember Chu is not part of the administration, he's an elected official. I tell people who give me something, don't give it to me unless you want it to be public. It's a public record. Sometimes people don't give me things.

>> Can I make one more comment?

>> Mayor Reed: Yes, Miss O'Connell.

>> I can understand not getting it until it's on the paper. It's never our intent to get something until the whole process had been completed. We didn't envision -- we envisioned getting it after all the interviews were done and the paperwork was completed. I don't mean to be a broken record. We're going on on the 8th. We'd just like to see it, so we know what we're talking about when we talk to councilperson Chu. Since he's got it, I don't think that's hurting the city in any way. We're not going to go out and make 10,000 copies and distribute it up and down the streets of San José. That's not our intent. It's just to make a meaningful input to a councilperson.

>> Mayor Reed: Okay.

>> Lee Price: May I make one comment? Ms. O'Connell originally made the request before the interviews were completed. She made a request, how do I appeal it? She said if you make your appeal at 5:00 on Thursday it will be in the pact on Friday. Again it comes down to timing.

>> Mayor Reed: When you give them to the council they should be public. That's just a rule, I don't know what the rest of the committee thinks.

>> Well --

>> Mayor Reed: That's just my opinion. I don't know what the rest of the committee thinks.

>> Can I sit down?

>> Mayor Reed: Yes, please.

>> Councilmember Constant: I think we need to respect the process and while project diversity has it and going through the interviews and all that it should be kept confidential. I kind of follow the guidelines, once I have it in my office and somebody requests it, I just fax it. Unless it's marked attorney-client, I think it's confidential. But otherwise if it's in my office I just give it to them. I think that's my understanding of how we do things.

>> Councilmember Pyle: Just one clarification. It will go to Councilmember Chu's office on what date?

>> Lee Price: This morning. They were all delivered to each of your offices this morning. Your respective boards and commissions that you serve as council liaison to.

>> Councilmember Pyle: If they request from Councilmember Chu to forward that information so that they can have it prior to the meeting, that would happen in his office, necessarily --

>> Lee Price: It could unless you want to go ahead and give me direction to do this as a practice, I mean that's your prerogative.

>> Mayor Reed: That's what I would recommend as a practice, if they're becoming public, available to the public after the committee gets done with its work and it gets transmitted to council, the public should have the information at the same time.

>> City Attorney Doyle: Once it gets delivered to the 18th floor it's public.

>> Councilmember Constant: You need a motion?

>> Mayor Reed: Yes.

>> Councilmember Constant: I'll make that motion.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion is to approve the release and direct the clerk to basically make that the policy going forward. That they're released to the public at the same time they're released to the council, the documents. All in favor, opposed, none opposed, that's approved. So Ms. O'Connell, you can get your documents before you see Councilmember Chu. All right, anything left, open forum I think is our last item, anybody wish to address the committee on open forum? Okay, we're adjourned.

>> Yes, I gave you a card.

>> Mayor Reed: On open forum?

>> Yes. You know this deal on the excused absences for gay lesbian bisexual and transgender boards and commissioners, the last time I spoke it was referred to the City Clerk's office and Dennis Hawkins, scream if I'm misquoting you, said that it would be considered with everything that Lee does. Here's the point. We need -- somebody needs to write a letter to all the boards and commissions and tell them that according to the City Attorney, you're covered if you're domestic partner, okay. And because this could be months and months before her report comes out. In the meantime the commissions don't know this. So if somebody could just educate them, that it's covered. I mean, I'll write a letter but I'd rather you guys did.

>> Mayor Reed: Anybody else want to speak under open forum? That's it. We're adjourned then, thank you.