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>> Mayor Reed: Good afternoon. I'd like to call the meeting to order. This is Rules and Open Government Committee meeting for March the 21st, 2012? Any changes to our agenda order? I don't see any so I'll just go through it. Starting with the March 27th council agenda. Anything on page 1? The invocation is going to be from district 3 not 4.

>> Dennis Hawkins: That's correct, Mr. Mayor.

>> Mayor Reed: Anything on page 2 or 3?

>> Councilmember Constant: With the ceremonials, if it's at all possible to switch 1.1 and 1.2, because the folks that are going to surprise with our commendation might not be there past then. I'll explain to you offline. I don't want to give out the secret on the recording.

>> Mayor Reed: All right. Anything else on page 2 or 3? Page 4 or 5. We have a request to defer item 4.3, items relating to the Rosemary family apartments, to April 3rd. Page 4 or 5? Page 6 or 7? Page 8 or 9? Page 10? Have request for some changes in agenda language, 9X that affect housing transfer. To be heard before item 4.4, which are actions related to mather court apartments. Some agenda language change, I think.

>> City Attorney Doyle: Mayor, we'll need to ask for a sunshine waiver on the documents, both the memo and the legal documents on 9X, the housing asset transfer. That is actually going I think to the oversight committee first tomorrow.

>> Mayor Reed: Okay, and a couple of requests for excused absences, Councilmember Herrera and Pyle, for illness.

>> Councilmember Constant: Mr. Mayor, I just had a question for the clerk. On item 6.1, I know you have to do the ballot counting and all that.

>> Dennis Hawkins: Correct.

>> Councilmember Constant: Would it be easier for you to give time to count so we can move that up in the agenda, so you can go count or have whoever you would have count go and count?

>> Dennis Hawkins: That would be fine.

>> Councilmember Constant: So first after consent?

>> Mayor Reed: Then we can get started and don't have to worry about waiting around if we happen to take a long count or a short meeting.

>> Councilmember Constant: So I would make a motion to approve the agenda as amended, with the sunshine waiver on 9.X on the additions.

>> Mayor Reed: Second?

>> Councilmember Oliverio: Second.

>> Mayor Reed: All right we have a motion to approve as amended with the waiver. One request to speak, Mr. Wall.

>> Good afternoon, glad everybody's rested. Item 4.1 on the agenda, the Cambrian 36 issue. I would think that you would want to direct staff to reformulate the sewer service and use charge and storm drain calculations pertaining to this property with reference to what Campbell charges. There may be a difference but especially in sewer service and use upon transfer. And I also would reject any sunshine waiver for item 9X. This Rosemary garden project is an atrocity and should be stopped, thank you.

>> Mayor Reed: That concludes the public testimony. We have a motion to approve as amended with the sunshine waiver. All in favor, opposed, none opposed, that's approved. Next is the April 3rd draft agenda. Anything on page 1? Page 2 or 3? Now I think we have two things that we're moving to this agenda from yesterday's meeting. We had the airport item and --

>> Dennis Hawkins: There was the legislation.

>> Mayor Reed: The piece of legislation.

>> Dennis Hawkins: And both those items are reflected on the agenda, Mr. Mayor.

>> Mayor Reed: Okay so they're already on there. I'd like to take the airport item early. We've had that a couple of times and run out of interest. I would like to have it early on the agenda and have enough time to get it done.

>> Councilmember Oliverio: After the consent calendar?

>> Mayor Reed: Yes, right after the consent calendar and then bee won't get squeezed. I don't know how long it will take since we already had a pretty good hearing but it will take some time. So anything on page 2 or 3? Page 3 or 4? We think we need a sunshine waiver on the ordinance on the outdoor smoking, is that just for the ordinance itself?

>> City Attorney Doyle: Yeah, everything is ready. It's just a 14-day requirement so this will probably get out tomorrow.

>> Mayor Reed: More than 10?

>> City Attorney Doyle: Yes.

>> Councilmember Constant: My question will be on something like this when there isn't anything time sensitive is there any reason we don't put it on the next agenda and not waive sunshine, I know we normally do it when we have time sensitive issues.

>> City Attorney Doyle: I don't care one way or the other. We've had this ready and working with the county and others to get an MOU on enforcement issues. But if it's okay with the City Manager's office --

>> Ed Shikada: It would be okay to have it open the 10th rather than the 4th.

>> Councilmember Constant: Thanks.

>> Mayor Reed: Item six.1, that's a proposal of airport parking and management, we should hear that after the other airport items, we can finish up the airport stuff and move on.

>> Dennis Hawkins: So Mr. Mayor, 6.2 immediately after consent and then 6.1.

>> Mayor Reed: 6.1. Anything else on page 4 or 5 or 6? I have no written requests for additions.

>> Councilmember Constant: Motion to approve as amended.

>> Councilmember Oliverio: Second.

>> Mayor Reed: Motion is to approve as amended. On the motion? All in favor? Opposed? None opposed, that's approved. Review of upcoming study session agenda. We have the agenda for the 29th of March, future retirement costs, pretty simple agenda.

>> Councilmember Constant: Motion to approve.

>> Councilmember Oliverio: Second.

>> Mayor Reed: Motion is to approve. All in favor, opposed, none opposed, that's approved. Legislative update state of California get an update from Betsy Shotwell.

>> Betsy Shotwell: Thank you, mayor, members of the committee. Betsy Shotwell, Director of Intergovernmental Relations. By far the biggest news out of Sacramento last week was the governor and the California Federation of Teachers merging the two ballot measures that they have had in circulation for November. That said now they had to have a new measure created an out on the street and they have about seven weeks to collect the million-plus signatures they need to qualify a ballot measure that would require about 800,000 signatures. The differences are, the governor's piece is now instead of a half cent sales tax a quarter-cent sale taxes for four years and the income tax impacts are for those earning over \$250,000, and then it escalates higher up, and that's the teachers piece. Although the teachers wanted it foster the increase in the income tax is for seven years. Those are some of the differences. The other measure out there is to raise funds permanently out of the income tax, Molly Munger's measure is out there. I know there is discussion back an forth between the parties. That's clearly what's in play. Not to mention the other measures that are in play for November. But that clearly is the one catching the most attention. With the other item I'd like to mention right now actually, local government committee meeting is taking place in the assembly, before them is AB 1588 -- excuse me 1585 which is what you say is one of the after-facts of the RDA termination and this would provide a mechanism to validate city agency debt, would also ensure that low mod funds for affordable housing are used within the region as soon as possible rather than be siphoned off to Sacramento. So that's in play. It's an urgent measure, needing two-thirds that got out of the transportation and housing committee last week, and again it's in assembly local government this week and then would go on to finance and the assembly floor. So these measures are coming together and we are tracking them and I thank you mayor for your letter of support for that.

>> Mayor Reed: Anything -- Councilmember Oliverio.

>> Councilmember Oliverio: Betsy are any of those looking specifically at the issue of city that pay off RDA take?

>> Betsy Shotwell: You CRAF, yes. To allow debts to be included in the definition of enforceable obligation one of the examples is CRAF payment made from three interfund loans of about \$20 million. Again remains to be seen how this will play out.

>> Councilmember Oliverio: Sure. And for the final was there only one bill introduced on medical cannabis this year or?

>> Betsy Shotwell: The one that I had mentioned a few weeks ago, I know I just got a notice there was yet another ballot measure that qualified for circulation yesterday having to do with medicinal marijuana.

>> Councilmember Oliverio: What about something from the legislature itself?

>> Betsy Shotwell: I haven't had a chance to see if there's any others that trickled in or got amended. But there was the one that I mentioned a few weeks ago.

>> Councilmember Oliverio: Do you remember off-hand which one that was? You can just e-mail me.

>> Betsy Shotwell: I'll e-mail you. Assembly member Ammiano, right, I'll send that to you.

>> Mayor Reed: Anything else on state update? We have nothing on federal update. Meeting schedules, we already talked about the study session. Public record, anything from the public record the committee would like to talk about? I have some requests to speak. We'll take the testimony first. David Wall, Martha O'Connell.

>> There are a few items for today's discussion. Item B, G, H, I, J, K, L, M, N, O should be liked at. But focus on item B. Item B is from the Cupertino sanitary district. As I gave testimony yesterday, Mr. Mayor, since 1992, with

my attendance at the treatment plant advisory committee, I have never seen any outward expression of disgust, and outright rebellion to participate in the reclaimed water project funding. This has profound ramifications for the entire funding of the recycled water project, advanced water treatment any expansion of the reclaimed water project and very possible, sir, massive refunds. This flows in part from the definition of the sewer service and use charge, as it applies to proposition 218. And how liberal interpretation of the aforementioned sewer service and use charge has resulted in a great white elephant that should not be funded from that source. So you'll have to come up with a real creative way to fund the recycled water project. And all its cursed derivatives. Predicated on the language contained within that letter. Thank you.

>> Mayor Reed: Martha O'Connell and Richard McCoy.

>> Martha O'Connell chair of the senior commission speaking on item F. I'm not going to reiterate all the testimony that you heard yesterday. I would just like to say that it is extremely psychologically stressful for these seniors every year to have to fight for the senior nutrition program. I don't know what the mechanism would be, if it would be a resolution or whatever, you would know better than I, Mr. Mayor, but that somehow you state in clear and unambiguous language that the senior nutrition program is an essential city service and that will be considered for annual funding on such a basis. I think that would relieve a lot of stress that these folks have to go through every year. I know this is my fourth year of doing it and it's very stressful.

>> Mayor Reed: Richard McCoy.

>> Good afternoon, mayor. I too wanted to address the senior nutrition program and I do appreciate the mayor putting it in his budget however I am a little concerned that the transportation part of that equation is missing. And having the opportunity to visit many of the senior centers, and evaluate their nutrition program, I've got the feeling that it's down 10 to 20%, some locations. And when I find out why the reduction, you say we can't get the seniors in here to partake of the meal. And when I read from the various reports that 800 people are now showing up, compared to what we had in the past of 1,000 people there's obviously 200 people can't make it. So I'd like to see

some money reinstated for the transportation program so we can get the seniors in to take part in the nutrition program and the other senior activities at the center. Thank you.

>> Mayor Reed: That concludes the comments on the public record. Items to discuss, councilmember Constant.

>> Councilmember Constant: Just on Item B, since the sanitary district has passed this resolution and claiming that they're not going to pay part of their bill, I just think we should refer this to ESD and the City Attorney so we can have it evaluated.

>> Mayor Reed: Okay.

>> Councilmember Constant: And note and file the rest.

>> Mayor Reed: I have a couple of comments on a couple of other items. The letter from EGAN Turpan regional director of spur supporting our effort to get a seat on the Metropolitan Transportation Commission and further recommendation is to have weighted voting. It's a letter to me so I will be responding. But there is quite a bit of information in the packet. And their analysis of how the MTC ought to be modified to better represent the interests of the region. So I will respond, copy the public record with that response as well. And then, items D and E, letter from Lafco and notice, and then a notice of a hearing from Lafco, since I don't speak Lafco all that much, I think this is consistent with what we're trying to do with the Campbell annexation.

>> Ed Shikada: Yes, Mr. Mayor, we were aware of it and report of its actions.

>> Mayor Reed: Okay. Then we have a motion to note and file except item B we'll refer to staff for response, that is Cupertino sanitary district letter. On the motion, all in favor, opposed, none opposed, that's approved. I think the next item is G-2, that is discuss and provide feedback to staff on report on conflict of interest issues related to city-related focuses. I think we had a letter from a month or so ago on somewhere in that area and this is a response. We have a memorandum from Jeff Ruster so I'll let Jeff start.

>> Thank you, mayor, city council members, Jeff Ruster, director of strategic partnerships with the City of San José and I'm joined with by chief Moor of the San José police department. We are here to provide a status report of referral of a February 14th, 2012 Rules Committee that referred to a citywide policy of conflicts of interest related to citywide foundations. Just as a general could be text, obviously foundations can provide a very important role in terms of augmenting resources for important city programs and services. At the core of any good foundation or nonprofit is strong executive leadership and board membership. Quite often boards not only bring their business expertise and their advocacy for these programs but also the resources that they are able to provide directly or sometimes that they are able through their own networks to be able to channel through the foundation in support of city services and programs. So with this nexus in mind, the whole issue of conflicts of interest will proceed can indeed arise from time to time. And I think there are two key frames on thinking about this. One is just recognizing that the community involvement of these members, they're volunteering their time sometimes putting their own resources into this, bringing in their own networks to support city services. But on the other side, it really needs to be a shared responsibility. A mutual interest and a mutual focus on making sure that both parties stay sensitive to both real and perceived conflicts of the interest in order really to sustain those partnerships and really kind of derive the benefit that was sought by striking the partnership to begin with. There are two key policies to guide staff in how they conduct mayor business. There is of course the City's code of ethics which provide general guidance in this area and also do again bring up the whole issue that staff needs to be sensitive to real and perceived conflicts. There's a little bit more detailed guidance in the city's policies related to donations, contributions, and sponsorships. One thing to kind of call out in there is there is a provision when that, that does prohibit staff obviously from receiving donations that might create a quid pro quo or kind of a pay to play expectation whether in terms of what they're able to decide on or influence or their ability to work with other staff to do that. Again, the foundations and their memberships are involved in supporting the foundations but they will also have their own business. And that business can relate to permits to contracts for services to development agreements and of course they may be work with or affiliated with regulated entities. On the foundation side there really are kind of two guiding principles when one looks at kind of the IRS guidance on this for foundations and there's the council on foundations, you know at the risk of practicing law without a license here but it seems to revolve around the duality of interest, basically that means that the people on those boards that have other

interests with the city need to be sensitive and aware of the other conflicts that can arise as to how they conduct their business with the foundation and of course there is the issue of materiality. The size of the support, the financial support and trying to be reasonable the influence that can be deemed to have been wheeled if it's a very small grant, 5 or \$10, or a much larger grant. I believe it's the city's library -- their policies around conflict of interest, some foundations will just kind of let it -- there won't be a specific number in their policies, in the case of the library any grant of above \$100,000 or more needs to be brought to city council. So again, kind of looking at what's there, in terms of city policies, the policies of the foundation, looking at IRS guidelines, looking at some conflict of interest provisions by other foundations, that is kind of a quick summary. In terms of where we're at and what I'll do now is give it over to the police chief to provide a status in relationship with the police foundation.

>> Mayor Reed, members of the committee, Chris Moore, Chief of Police. Appreciate the opportunity to talk a little bit about the foundations, the police foundation in particular. The last time we spoke was last month and there was a concern about the police foundation. I am happy to report that after a meeting subsequent to that, that Rules Committee meeting that the president of the police foundation said they had done a review of their own existing policy which I believe is included in the staff report was the foundation of that report, was quite strong with respect to appearances of conflict of interest as potential appearances as well as actual appearances, and they in their own mind had not been following it and concurred, the president of the board stepped down which is ultimately what I think needed to have happen. New leadership has emerged, they made a commitment to the police department, and I made a commitment to them that we move forward which is what I was seeking all along, to maintain the events that they have, which are good events, so I would hope that everybody goes to bowling for badges, and I'll put a shameless plug in, in May, because I do think it's a good event, but also work to develop a strong board without conflicts and make sure we all benefit that duality of interest that we all want to see in our foundation. I'm happy to report that we are on a much better track than perhaps we were before.

>> Mayor Reed: City Attorney.

>> City Attorney Doyle: I just wanted to address because part of the referral dealt with legal conflict of interest specifically with respect to this situation. I think as the chief knows and as I at least have let Councilmember

Constant know there was no legal conflict of interest from the City's standpoint. The issue was the appearance. And I think the chief determined that in his mind there was a conflict that he just was not comfortable with the relationship. And I think any time you are in a regulatory capacity when you might have a lobbyist serving in a role, or fundraising or and it really gets into an issue where there might be discomfort and that comes up in contract situations as well. So I think clarity, guidelines help, I'm not opining on the potential for any conflict within the organization themself. That's their business. And what rules govern nonprofits or what bylaws govern a particular organizations is not our -- not within our jurisdiction. But from the legal standpoint, there was no real legal conflict of interest, it was just the appearance that raised the concern.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: So I appreciate the work here but I don't think we're any closer to having any clarity. Because what this basically does to me is, it says look in all these different places, and figure out if -- how you think the relationship may work. And relying on a nonprofit's bylaws that we don't know if they change from month to month I don't think is a good policy for the city. And when I first discussed this with the City Manager after this issue arose, my concern that I shared with her, and her initial response was that she agreed, is that we have to have a uniform approach. And unless I'm missing it when I read this I don't see a uniform approach. And I think that if we want to avoid conflicts like this happening in the future then we should have a city policy that lays out if we're going to have a relationship with a foundation, this is what we expect. Because eight months from now, ten months from now, three years from now, ten years from now, we have different people sitting in the chief's position, we have different people sitting on these foundation boards. They could have changed their bylaws a dozen time and all of a sudden we have the exact same perceived or real conflict and a disruption. And what I was upset with, was the disruption. And I don't think we've gone anywhere towards solving that. So I appreciate the analysis of the situation. But I don't think, and unfortunately I don't have the original memo. I thought it was in my packet. I don't think we really got to coming up with a uniform policy on how we're going to deal with these things.

>> Ed Shikada: Councilmember, I believe your memo attached to -- no, it wasn't.

>> Councilmember Constant: It wasn't in my packet. I must have left the folder --

>> Mayor Reed: Councilmember Oliverio has a copy.

>> Councilmember Oliverio: Care for this?

>> Councilmember Constant: I have it now. So I really think that we figured out number 1, we reestablished the relationship. And I saw the chief's internal memo that went out to his staff. In reestablishing that relationship. I've talked with the folks at the foundation board. I agree we're on the right track there. But item number 2, I don't think we've broached at all.

>> Mayor Reed: Which is?

>> Councilmember Constant: Which is to develop a uniform policy for handling grants offered to the city by city related foundations, regardless of what department or program they support. And I think that is really the key to avoiding problems like this in the future. And so I think that's a discussion we should either have here or at the council level. But I think that's something that I think we need.

>> Ed Shikada: Mr. Mayor, if I pilot --

>> Mayor Reed: Certainly.

>> Ed Shikada: If I could draw your attention to the second page of the staff report there are a couple of bullets under the analysis that do refer again not to suggest that this hits the point directly on the head. But just the context of our existing policies. The two policies most applicable, Mr. Ruster pointed out, one our own code of ethics that states the employees should avoid the appearance of conflict in order to ensure city decisions are made in independent and impartial manner and the second is really more of a framework issue which takes

revenue generating to the departmental level. And so in effect what occurred within the police department happened in the context of these two steps, one, the chief has his own, as in city employee, responsibility to ensure that his own interaction would avoid the appearance of conflict. And then second, on the revenue generating policy, and how it was articulated within the police department's internal procedures for accepting and seeking donations from the police foundation. That were really done pursuant to these two policies. So to your point, again, it's not direct and specific to foundations in city employees, but these are the two policies we identified as applying most broadly to that situation. And as we've talked through and looked at the library foundation and parks foundation issues, I think it's accurate to say that there are somewhat unique and at the same time somewhat similar situations that can occur within each of those contexts. And so what we've observed is something of the bilateral responsibility that exists both on the city's side as well as the foundations that using these policies along with the foundation's own that have been made to work.

>> City Attorney Doyle: And it may be since we've had some conversations and it may be a good idea to try to craft something. I can use an analogy in that it's the former friends accounts that councilmembers had. And you got away with that in part because you were concerned about the appearance of you're out voting and raising money from folks that are either lobbying or donating to the friends accounts. And the challenge is given the budgetary realities and trying to find private funds, making it all work. And I think coming up with some guidelines may be a good thing to give clarity.

>> Councilmember Constant: And I think that that second bullet, council policy 1-17, basically says what I'm asking, that we should have developed guidelines and have them reviewed and approved and we don't have that. At least if we do, I don't see them. And I think that having something explicit, specifically when it deals with the regulated industries, and specifically because of the budgetary environment and the fact that we now are choosing to rely on foundations for funding streams.

>> Mayor Reed: Let me suggest we take, from page 3, the San José police foundation's conflict of interest policy, and the library department's guidelines for contributions, and put them in council policy 1-17 and just be done with it. I know it's simple but --

>> Councilmember Constant: Well --

>> Mayor Reed: It's direct.

>> Councilmember Constant: It is, but I -- I think I'd like to see all of the guidelines before we do that. I mean what we're having is --

>> Mayor Reed: I would expect that staff would bring it back to us with the guidelines in.

>> Councilmember Constant: Because I'd like to see something that uniformly applies because we may have ten more foundations in ten years.

>> Mayor Reed: I was contemplating making this apply to all foundations that the library guidelines, language looks good, police foundation policy looks good. That we take that, those maybe not exactly that but put that in our policy, that's just in anticipation of the people that we're getting money from will have their own policy like the foundation does. And then this nothing that's going to give the appearance of a quid pro quo. Rather than do it department by department which is kind of what we originally were contemplating with 1-17 and that's only happened in some of the departments. So have staff draft up something in 1-17 and bring it back to us. Pete.

>> Councilmember Constant: And I think that's exactly what I asked for in number 2.

>> Mayor Reed: Okay.

>> Councilmember Constant: So I'm happy with that as long as it's buttoned up and anybody who's a department head or an employee or a foundation can look at it in one place and see. I don't want to say go refer to this council policy and that council policy and go check out the library one and this one.

>> Mayor Reed: If it's going to be buttoned up we have to put it in the button policy too.

>> Councilmember Constant: Yes.

>> Mayor Reed: I had one or a couple of requests to speak on that, let's take that now, David Wall.

>> First I'd like to give commendation and accolade to the chief of the San José police and to the San José police foundation for bringing this issue forward and making declaratory statements. This only serves to illustrate and define the complete trust that the community should have in its police department and it also raises a very serious question as to the leadership of the council. Why the San José police department or the San José police foundation has to require or has to provide the necessary equipment, be it 400 trauma kits, three Segways, ballistic vests for canine unit, bolt cutters for every patrol car for use in the rare type of Columbine-type incident, and otherwise support to carry out their mission to protect the public. Now, this is more than damning to the leadership of the city, as referenced by the council, that such a situation has to exist in the first place, and that accolade in great praise from the foundation shouldn't be forthcoming on a frequent and recurring basis to give notice that the foundation is basically compensating for the lack of leadership to provide the aforementioned requisite materials. This should cause you great concern and hopefully upon discernment and reflection you will correct this errant behavior and not put the San José police department in such a precarious situation.

>> Mayor Reed: Martha O'Connell.

>> I'd like to speak in favor of the motion that I think is going to pass. I think it's really important to have a clear uniform policy that is written down that everybody understands and everybody goes by. And I don't think the solution is for some officers of a foundation to, quote, see the error of their ways and resign and now we have new leadership. Because this just solves this instant situation. So I hope that you do come up with a uniform written policy.

>> Mayor Reed: Okay, that concludes the public comment. We have a referral to staff on this.

>> Councilmember Constant: So the last question or comment I guess would I make is, this clearly deals with the foundation's practices. But what happens when one of these foundations gets a \$100,000 check from a regulated industry and I don't think we've addressed that. So I think that was kind of the whole root of how this issue came up with originally. And the potential for pay to play. So as we develop this policy, or put these policies all together, I hope that is something that we address.

>> Mayor Reed: Yes, Councilmember Oliverio.

>> Councilmember Oliverio: City Attorney if we're so fortunate to have a massive donation from a certain organization the council could consider it at that time?

>> City Attorney Doyle: That's correct. The council has a policy and you have a gift trust fund that you can put the money in and earmark it for, if it's for a specific purpose that's really what the fund is for.

>> Councilmember Oliverio: I don't want you to deter any large donors to the city.

>> Mayor Reed: We can work it out probably. Anything else on this? We'll bring it back for various modification of the policy. All right. The next item is, item number 3, G-3, that's a request to direct the manager to establish a process for reemployment of retirees of the Police and Fire retirement system, similar requests for the Federated retirement. Councilmember Constant, or Oliverio, do you want to speak to your memo?

>> Councilmember Constant: This came up as a result of a discussion at the Public Safety, Finance and Strategic Support Committee, realizing that with the reductions in staff that the chief has had, and now that they're faced with having the opportunity to hire people, which is a great idea and hopefully at some point we'll start restoring a bunch of numbers and they'll have a need to do a bunch of background investigations, the cost for the department to do it is significant. Because they either have to go through because of lack of staffing they either have to go through a lengthy RFP process to hire somebody to do that, or they have to transfer people from patrol

or other work in the police department to backgrounds and then fill those positions with overtime. Because they're already at or below minimum staffing. We have a process and a procedure in place for the Federated employees for short-term employment on a contract basis to bring retirees who have the experience back to do the work. I actually think that in this particular case of recruiting and backgrounding the work that they do, it's even more critical to have people who have the skills and the experience in our department to do it. Much more so than several other hire-backs I've seen on short term basis. I think if we could mirror the process that we have for the Federated side of our city to the Police and Fire side it would give the chief the option and totally at his discretion that if he believes the best way to handle a recruiting cycle which is typically that backgrounds are six to eight weeks or 12 weeks, something like that, that he could go and if there are retired San José officers who have the knowledge and the experience and the availability, the chief could hire them back on a contract basis of not to exceed X number of hours per year to accomplish these goals. So that's the intent behind this, so that we're not paying consultants or overtime to do something that we have the capacity to do.

>> Mayor Reed: How does this relate to the civilianization recommendations of the City Auditor? Seems like these are positions that I think were on the list of items that she had recommended for civilianization. So if we hired back a retired officer, do they come back with a badge and a gun or do they come back in a civilian spot with their experience and knowledge, as what we need?

>> Before Alex talks a little bit about some of the issues of civilianization which I agree, let me provide a little bit of context because I know there was testimony at the Public Safety and Strategic -- PSFSS, but for other members who didn't hear this, we are again fortunate, as Councilmember Constant said, that we now have vacancies to fill. Unfortunately, it is not an increase in strength, it is just now we have people retiring and leaving, we have to backfill. And we are so short in patrol, in order to take -- what we would typically do is take people on and temporarily assign them out of patrol to work these backgrounds. Now, mind you, the background itself is a 40-hour background, and when you add on administrative time, it's probably close to 50 hours. But on average it is probably you have to take 10 applicants that you have to background, of which you will actually pick one. So you are doing a whole lot of backgrounds. So you TDY somebody, temporary duty them for potentially upwards of four months, and give them a whole stack, and then work them all the way through, and then you get the best of the

best and you take them to a hiring board. With that said, we're trying to hire people for September, and we're right in the middle of a cycle. I will say that we are -- actually have a very good recruiting cycle this time. We had a lot of really good qualified candidates. For all the things that have been said about us not being able to get some, we are getting good candidates, which we are grateful for. Now we've got to get them backgrounded. Either way, we won't have time to go through an RFP process to hire an outside firm, or even bring back retirees, in the short term to get us where we need today. So what we're doing is work with the budget office and the manager's office, we're going to go ahead and take these people out of patrol, do the backgrounds, and then hire back selectively on overtime to fill what we really need to fill in patrol. That's the short term solution. Now you get into the issue of whether you're going to hire retirees or contract out for civilians. Either way they will be in a civilian status. Typically we like retired officers. They tend to do the best backgrounds. They've retired, you know, they don't have to pay them benefits, it's a service that they provide us. I don't think it's necessarily any quicker and Alex can I think share that thought with you that one or the other is not going to be any quicker than hiring a firm through an RFP process or the retirees and I'll turn it over to Alex if I got that right.

>> Alex Gurza: Good afternoon, Alex Gurza, deputy City Manager. As the chief indicated, we are proceeding on the short term to be able to get the backgrounds done for the officers being hired in the short term. But in the longer term or I would say medium term we are proceeding with the outsourcing of backgrounds. It is subject with meeting and conferring with the San José Police Officers Association. We have already written to them indicating our desire to do so and we're going to be meeting with them. We are going to be going through that process and then hopefully we will be able to achieve that for the next recruitment and can do that and do the outsourcing. If the city council would like us to pursue a policy similar to Federated to be able to rehire police officers and firefighters. That process, as the chief indicated, isn't necessarily any shorter because we don't have such a program now. It does require, A, meeting and conferring to establish a process, as well as an ordinance amending the San José municipal code. And there are time frames as you know in order to do that. Also, since it amends the retirement plan there is a review period by which the board has to review it. So again, we could pursue that but it is not something that could be done for the recruitment and backgrounding that's being looked at now.

>> Councilmember Constant: Just real quickly. I understand that and my intent wasn't to try and ram it through for this one cycle. It really is to look at the long term needs of the department. And quite frankly, my understanding, not only talking with this can chief but our previous chief and people in personnel, is that bringing someone who knows our system in will give us a more efficient and quality background investigation. And I would love to see the analysis of what it would cost to outsource because we know when outsource companies they not only have to pay the employees but the overhead and profit, how that would compare to simply hiring a retiree at the pay job scale, I hate to bring up secondary employment but something similar to that we know the value of that and we could calculate out what the difference is in dollars and cents. But I think the important thing is we also know people who know how to do our backgrounds and I don't think the chief would argue with me in the fact that in the entire hiring process nothing is as important as that background and so that was my intent.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Yeah just the intention is to simply streamline the process for backgrounding. Not everything in union negotiations is about benefits and compensation. It's about sometimes these odd rules that residents don't understand and they don't get and they would prefer that decisions get made by the chief to implement things and people get backgrounded as quickly as possible. We should in my opinion pass this as soon as possible, change the municipality, we should also do an RFP just to know what it is if it's not very expensive to do that amount be ready to go so as the next positions be available, we can background people however you want to do it, whether it's rehiring a retired San José police officer outsource or whatever. But I think we need to put this forward and get going. My only regret is not to put this memo forward sooner.

>> It is cheaper.

>> Councilmember Constant: And I think the meet and confer process with our POA, in this regard, would probably move along much quicker than in a straight outsourcing regard.

>> Mayor Reed: I think we have to have the capacity to do either.

>> Councilmember Constant: Given the option A or B.

>> Given everything I wish it were that simple. We tried that and the reality is I think in today's scenario it's going to be challenged. But it's a process like anything else and we'll work our way through the process. They do understand, I've had this conversation with leadership we're trying to hire people. I'm looking for some assistance to get us what we need right away. And they're polite, and I get their point, but we just need to get this done.

>> Mayor Reed: I don't think there's any doubt, that you have got to proceed with doing what you're doing now for this round. None of this is quick enough to do anything other than what you're doing now, I think, so you got -- that problem has a solution. But in the longer run I think we ought to have the capacity to do it either way.

>> You bet.

>> Mayor Reed: So that whatever you need because you don't always get a lot of warning that you're going to have to run a academy and do backgrounds that you can do it either way to be the most effective and the most cost-effective and efficient. Councilmember Oliverio.

>> Councilmember Oliverio: Yes, just to say, with challenges some of controllable and some are not. The ones that are controllable that under your authority you should make it happen. Thank you.

>> Councilmember Constant: And one of the reasons that I wanted to put this out is I think it's really important that the council weigh in on this and that there's a strong voice of support from the council, that we want to be able to restore the services, we want to be able to give you the tools to do it as quickly as possible, or we can give you the dollars to put the people on the street and it really shouldn't be about anything else.

>> Ed Shikada: Mr. Mayor, if I may add just to ensure we are interpreting the feedback here. It appears that this is really intended as an additional tool. And one that can help us get the work done. So perhaps the best

approach we would have is one to look to the opportunity to put it on the table, to address the meet and confer option, as well as to look at the next opportunity working with the city attorney's office on the ordinance. So to factor this into the work plan and move it forward as we can.

>> Councilmember Constant: And the best comparison that I could give is, when our City Manager has a special project, she makes a determination if she wants to hire a consultant to do it and sometimes she brings back a retiree. It is her decision. We have only given her the tools to do that. And I would like to give the chief those exact same tools and allow him to make the decision what's most cost effective for his budget and best quality fashion.

>> Ed Shikada: If I could make some addendum to that, and note that even those retiree hire decisions come through the City Manager's office, so the chief isn't entirely free to make those decisions but that said, I appreciate the comment.

>> Councilmember Constant: But we value his advice.

>> Ed Shikada: Absolutely.

>> Alex Gurza: One thing to add, if the committee would like us to pursue the rehire retiree program, we would need to have the discussion with the full council in the to get direction on the meet and confer side. And as the council is aware we have quite a big list right now. In terms of items that are subject to meet and confer so we would have to get that direction from the council.

>> Councilmember Oliverio: Such an easy one. We want to hire police officers and we want to do it as quickly as possible. So understanding that this is not the same thing as pension reform or anything else, this is just simply getting past an obstacle to hire retired police officers to do backgrounding. I'm sure you'll do your best.

>> Alex Gurza: Completely understand, Councilmember Oliverio. The issue really isn't hiring them. The issue is, if we hire people that are already retired, they are already collecting a pension from San José. So the issue is to

be able -- what the program allows is to be able to bring back someone who is collecting a pension and earn pay again without a reduction in their pension. And so that is -- it is a program we do have in Federated that we watch very, very closely. To ensure that it's being used prudently. But the Santa Clara grand jury did do a review of this program and we have used it judiciously. It is not the issue of hiring somebody, it's the issue of hiring somebody who is a full time retiree and allowing them to come back to work. And so we have to establish that program similar to Federated and discuss it with the council, before we proceed.

>> Councilmember Oliverio: Sounds like it's very assignment based, it's a short amount of time. You'll do your grouping and there's a fair amount of retired San José police officers within the county. I mean you could cycle through them.

>> Alex Gurza: Yes but this program for example if we were to do the outsourcing it doesn't necessarily have to be a San José retiree. In order to allow a San José retiree to come back and do the work if they are retired then we would have to do this program. Otherwise they couldn't collect their pension and also come back to work for the city. So those are just complicated that we have to make sure we do it appropriately.

>> Mayor Reed: So what we should do today is direct staff to put these on the items to bring to the council under meet and confer direction however you do that. You do that from time to time.

>> Councilmember Constant: And that's the motion I'll make and just to be clear my intent is not to make this for all, and any, work. Quite frankly it is for these narrow circumstances of backgrounds. I'm not looking to make a fairly broad policy where the chief can just fill beats for three weeks with retired officers. That's not the goal here at all. So we can have that discussion when we get the direction from the staff on the meet and confer. So my direction is clear, to deal with this issue in the police department or fire department as we start to restore services and move people on the street. My motion is to put it on the list and bring it to council.

>> Councilmember Oliverio: Second.

>> Mayor Reed: All right, I have a motion, and I have a request to speak on the motion, Mr. Wall.

>> First there needs to be another period of reflection and discernment by the leadership of the council. Why the City's in the situation, why the police department's in this situation, why employee relations is in this situation. Because we had a lot of police officers. That were laid off. Shortly thereafter we're now hiring new police officers which raises the very poignant question if these officers were laid off intentionally to attack their retirement benefits. That issue has not been forthcoming from the leadership of council. And is over the heads of council, as a very dark and ominous cloud. Furthermore, we give accolade and more praise to the San José police department for coming forward with this request. But in reference to issues raised by the office of employee relations, we ask the questions, we talk about Federated restrictions. What about bring employees back from the management ranks such as D.O.T. or Public Works to fill in intellectual voids at the environmental services department and others? Okay, those people are double-dipping and so therefore to put the onus on retired beat cops coming back to work as second class citizens that is objectionable by being vulgar. And furthermore, these police officers, upon the necessary training to refresh themselves with weapons and other issues, should come back fully restored. As San José police officers to do background issues, and not by pontifical means by leadership of council, to restrict the chief's hands in the application of these retired police officers. And that is my directive as a citizen. Thank you.

>> Mayor Reed: Martha O'Connell. I'm sorry, well, that was the only card on this so that's public testimony on this.

>> Councilmember Constant: Let the ominous dark clouds part. Not only did the chief not ask me, I didn't even tell him I was doing it. I probably should have, but he's kind of used to that by now. So I'm comfortable moving this one forward.

>> And I appreciate that one, this is a good one.

>> Councilmember Constant: You notice you said "this one."

>> Mayor Reed: On the motion, all in favor, opposed, none opposed, that's approved. Open forum is the last item on the agenda. David Wall.

>> On March 7th I put forward a public record request for information concerning the BLP engineer contract which is an excessively dark and looming cloud, since the treatment plant advisory committee passed it, and the council saw fit to pass it, all after the fact before my questions were answered. Now, I'm not complaining as to the time limit because I'm very charitable in this regard, because I view the public record's management officer as a very honorable person. And due to the frail advertise associated with the budget problems, the influx of public record requests from probably every union in the city, but I do not know why this request was not honored. I am not asserting at this time period my right to go forward with this matter. I'm just asking as a charitable citizen would under the confines that the city is under, just to phone calls, normally if they're going to be late, they give me a call, and they need more time, and I said that's fine. But I don't know what happened to this request. And I have serious, and let me repeat, serious reservations about anything to do with this type of contract out at the water pollution control plant. Furthermore, I made a mistake yesterday. I referenced South Carolina in my memo, where a deputy director from ESD is quitting, has given a notice for six weeks, and gets to go on a conference. I referenced South Carolina. That was wrong. It is North Carolina. And a principal engineer, Mr. Mayor, usually in my day at water pollution control, they had scads of people underneath them. The principal engineer at ESD has no one. But gets to go on travel trips to Europe with his deputy director and now to North Carolina. For biosolids work. And I'm of the opinion, it's one thing to subs --

>> Mayor Reed: Sorry, your time is up. Does 9 have comments or information on the public records act request Mr. Wall was --

>> City Attorney Doyle: No, we will look into it.

>> Mayor Reed: BLP engineering. We have no response at this time on that Mr. Wall but staff will --

>> Ed Shikada: Be happy to follow up.

>> Mayor Reed: Staff will get back to you and now the open forum, Martha O'Connell.

>> One of the frustrations for citizens is, why does it take so long for the government to do anything? Three years ago -- three and a half years ago when I came on the senior commission I was told that the chair could neither vote on a motion nor put a motion on the floor. Last year I researched that and found out the chair could indeed vote. Then another issue came up at another commission, and I did some more research and found out all chairs of the boards and commissions can vote and can place a motion on the floor. So I went to the office of the City Clerk about five weeks ago and I asked for a two-sentence letter, just two sentences, to all the boards and commissions. The chairs can vote, and the chairs can put a motion on the floor. And I have gone back and back and back to that office, and they still haven't written two sentences on a piece of city stationery. And I even asked if the deputy director could do it. Meanwhile, this is why this is so critical. Those of us who know we can do it are doing it, and all chairs are not being treated equally, because they don't have the information. So could you guys put out a two-sentence letter together on state -- Freudian slip -- on city stationery to let us know we can do this?

>> Mayor Reed: Mr. Wall.

>> Yes, sir? There is a loophole in a -- at D.O.T, the guys that do the concrete maintenance that go out and inspect, the concrete inspectors on sidewalks, curbs, gutters whatever. There's a loophole that gives property owners an ability to scam the city that needs to be addressed. I know several properties in my neighborhood that were tagged by the city for bad concrete repairs. These properties at least three of them according to my investigations, just by word of mouth and good word of mouth, are claiming economic hardship. And by doing that it defrays the process out, maybe 179, 180 days. This causes -- it's burdensome and oppressive to D.O.T. and the city machinery to take care of this problem. But these same properties operate as commercial enterprise. Because they've chopped up their residences into rooming homes. So wherein lies economic hardship for one, and two, should economic hardship be a reason? Because you can always attach it to the property. As a lien. And the city has to move forward as it does. And I think this should be corrected. I mean, this is even worse

than -- well, not as worse as in lieu of parks funding. But it's a loophole that people are taking advantage of when they're actually running commercial enterprise that are not being taxed by the city, not being regulated by the city and now they're playing games to defer the responsibilities of property upkeep and personally I'm against sidewalks, let me go on record of that, I don't like them at all. But I just wanted to bring it to your attention, if you are going to do this, close the loopholes.

>> Mayor Reed: That concludes the open forum, concludes our meeting. We are adjourned.