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>> Mayor Reed: I would like to call the Rules and Open Government Committee meeting to order for November 4th, 2009. First question is whether or not there are any changes to the agenda order. I'd like to take item J-3A which is the public records act request regarding the Daniel Pham matter, as soon as we're done with basically council agenda, there's no legislative update and one meeting schedule question. So that would be after item E. Because I don't want to lose our quorum before we get to that. And I know that some councilmembers have to leave, and I don't know how many people are going to testify on that. So I'd like to do that earlier in the agenda if that's okay with the committee, all right? Any other changes to the agenda order? Not really. As long as nobody objects we'll be fine. We'll start with November 10th council agenda. We have a couple of recommendations that are listed on the agenda for additions but we'll start with page 1. I have one question, on page 1. I've got some requests for evening discussion of the redevelopment agency budget. We're having a study session in the among on Monday and we are discussing it on the daytime on Tuesday but we don't have an evening schedule on the redevelopment agency budget, since we're doing dramatic differences there's more public interest in it. What I'd like to suggest is have the hearing in the afternoon as scheduled, and then continue that hearing until the evening at 7:00 p.m. That way, if anybody can't come in the afternoon, we can finish the hearing in the meeting at 7:00 p.m. I hope we can get a quorum for that, because I know we have at least three councilmembers who will be absent that day to begin with. I'm not sure what the count is.

>> Councilmember Pyle: But I can't be there, as well. I have a meeting --

>> Mayor Reed: Right, so I know this is in addition to the schedule, we have a problem getting a quorum. We're down to seven. Can we continue that hearing, although we're not taking action can we continue if we don't have a quorum that comes back?

>> City Attorney Doyle: You can continue it up to seven days or you can continue to the next meeting, you just have to notice it.

>> Mayor Reed: So if we were to set it so that we'll take the testimony in the afternoon, continue it to the evening at 7:00, we come back at 7:00, we don't have a quorum --

>> City Attorney Doyle: Then you can continue it after --

>> Mayor Reed: Just pick another time to do that. I don't know how much public interest will be for the evening part of it. But I think given the scope of the changes that are happening in the redevelopment agency budget, there will be more interest. So is that okay with the committee to do that, especially for those of you who won't be here?

>> Councilmember Constant: I think you should stay all night.

>> Mayor Reed: The longer it goes the better, as long as you're not here. You can watch it on the web wherever you are, traveling -- okay, so that would be one change to the orders there. Anything else on page 1? Page 2 or 3? Page 4 or 5? I've got a note on the independent police auditor recruitment. Any reason to defer that to the 17th? Okay. Request to do -- for a week. Anything else on 4 or 5? 6 or 7? Anything on the city council financing authority agenda which is pages 8 and 9 and 10? Requests for additions. We have an item deferred from the November 3rd meeting, that was deferred to the 10th, which is the report on RFP for multifamily loan portfolio management system which we decided to defer a week. So that needs to be -- added.

>> We'll bring that item forward on November 17th.

>> Mayor Reed: Okay. The multifamily housing at Bella Vita at Newbury Park was deferred from the 3rd to the 10th, and now to the 17th, and the RFP for concessions for Happy Hollow Park and Zoo deferred to the 17th. Staff requests on those.

>> Councilmember Constant: Just so I'm clear, two of those are going to the 17th, 2.5 and 5.2, and the other two are going on the 10th?

>> I can walk us through the document. What's being referred to as the items referred from November 3rd to November 10th, item 2.5 which is the multifamily loan portfolio item, that's being requested to deferral to November 17th, staff needs more time to respond to council's questions. Item 4.2 which is the first amendment is already on the agenda reflected on November 10th --

>> Mayor Reed: Wait wait, I don't know what 4.2 is.

>> It's the First Amendment to the agreement with Novellus Systems.

>> Mayor Reed: Okay.

>> That's already noted on the agenda. Item 5.2, the RFP for Happy Hollow, for retail concessions, we are requesting deferral to November 17th.

>> Mayor Reed: Okay, then we have the naming of a new park, actually naming of two parks items to add.

>> That's the separate -- let's see, I don't have --

>> Mayor Reed: A new park and senior center.

>> Councilmember Constant: Mayor, if I could just ask a quick question.

>> Mayor Reed: Yes, you may.

>> Councilmember Constant: On these two items when they come on the council agenda, would it be possible to have fiscal impacts associated with these decisions?

>> The naming of a park --

>> Councilmember Constant: Mainly the renaming of a senior center. What kind of fiscal impact will that have on us and why now? Is it something that can be done at a later date depending on how much it costs?

>> Lee Price: Would you like us to kick this rather than putting it on for the 17th, do you want to refer it back to staff?

>> Councilmember Constant: I think as long as they have the answer to that question, at the meeting, it would probably be fine by me.

>> Lee, your request is to add these to the November 10th agenda. What I was whispering to Ed is we would put a supplemental memo out to Lee's report but, it would likely not be distributed in time for council's action on Tuesday, probably go out maybe Monday or right on up to Tuesday. We would still need to get the referral to staff. So kicking it one week may make more sense.

>> Councilmember Constant: I think if their not time sensitive they are information we need to have on this issue.

>> City Manager Figone: Given the 17th is so challenged if it's not so time sensitive, Lee, could it go to the first meeting in December, is that okay with the committee?

>> Lee Price: The reason these are on in this fashion, they came in during the Rules Committee meeting last week. So had I received them earlier that day, I could have had them on your drafts by the 10th. So I was attempting to try and work with the departments to get them on your agenda, but we certainly can defer them and then request that information.

>> Just so we get everything out together.

>> Councilmember Constant: Thank you.

>> Mayor Reed: So defer those to the 1st, is that staff's consensus? December 1st meeting? I think those are all the requests for additions to the agenda. Does staff have any others that I didn't get to?

>> Councilmember Constant: So I'll make a motion for approval with those amendments and deferrals.

>> Councilmember Pyle: Second.

>> Mayor Reed: Okay so the motion is to approve the amended agenda which includes the 7:00 continuation of the testimony on the RDA budget, all in favor, opposed, none opposed, that's approved. November 17th council agenda. Anything on page 1? Page 2 or 3? Page 4 or 5? Page 6 or 7? Page 8 or 9? Page 10 or 11?

>> Mr. Mayor, on item 4.8, the sign ordinance update, this item is an early distribution item yesterday, and in that packet we noted it would go out on the early distribution packet on Friday. It did not make the early '06 packet.

>> Mayor Reed: So it will go out Friday, which is ten days? And if we don't hear it on the 17th it will be into December because we have Thanksgiving week off. Well, the ten days still meets our sunshine, okay? Anything else on page 10 or 11? Page 12 or 13? 14? I have one additional item that may need to go on this agenda that's the biennial ethics review which I'm working on. If I get the memo out by Friday it would meet the ten days' rule. We don't have a hard deadline on that so it could conceivably go into December but I'd still like to get it on, in November. Requests for additions, some excused absence requests, Councilmember Campos, Vice Mayor Chirco, Councilmember Nguyen. Any of the other requests for additions.

>> Councilmember Pyle: Move to approve.

>> Councilmember Constant: Second.

>> Mayor Reed: Motion is to approve as amended. All in favor, opposed, none opposed, that's approved.

>> Councilmember Constant: Did we check the start times to make sure they were right? Okay.

>> Mayor Reed: Redevelopment agency agenda, November 10th. Anything on page 1? Page 2 or 3? The only thing on there is the hearing on the capital and operating budgets which we just decided to do in the afternoon continuing into the evening. Anything else on the agency agenda? No, okay.

>> Councilmember Pyle: Move to approve.

>> Mayor Reed: All in favor, opposed, none opposed, that's approved. Agency agenda for the 17th.

>> Abi Magamfar: Mr. Mayor, the agency does not have any items for the 17th. We recommend cancellation of that meeting.

>> Mayor Reed: Okay, we can do that. We won't have a Rules -- regular Rules meeting next week, but we can cancel it today.

>> Councilmember Constant: Motion to cancel.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion is to cancel that meeting, the Redevelopment Agency meeting. All in favor, opposed, none opposed, that's approved. Legislative update is the next item, we have none. Meeting schedules. I'd like to talk about the Rules Committee meeting schedule. We cancelled a bunch of Rules Committee meetings through the holiday. I'd like to consider having a special Rules Committee meeting Monday afternoon at 2:00, in order to consider a change to the Public Safety committee agenda for November 19th. Councilmember Nguyen and I did a memo about getting some public safety issues on that agenda, and if we wait until the 18th, we'd be putting it on the agenda the day before that committee meets. So since we don't have a Rules Committee next week, due to the 11th is a holiday, Veterans Day, we could do it at 2:00 on Monday afternoon, I think that is clear on the calendars of committee members.

>> Councilmember Constant: Motion to approve.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion to approve the Rules Committee meeting. Would it be just for that one item or do we need to --

>> City Attorney Doyle: That's the question, do you want to have the agenda review as well at the same time, as we would any normal Rules Committee meeting?

>> Mayor Reed: Will it be ready for review?

>> City Attorney Doyle: The 17th will be and then the 1st won't be available at that point. You will at least have the 17th to review.

>> Mayor Reed: Might as well. As long as we're here.

>> Lee Price: And that way, if you want to put any time-certain, since it will be a full day, you have the opportunity to do that.

>> Mayor Reed: We can think about it then, okay.

>> Lee Price: But just the review of the final draft of the November 17th, and then this item. But no other regular items, unless something comes up between now and then we feel we need to bring forward.

>> Mayor Reed: Whatever needs to be on the agenda when the agenda gets published.

>> Lee Price: Four days for special.

>> Mayor Reed: So that needs to be ready tomorrow, whatever is going to be will have to be tomorrow.

>> Lee Price: I'll work with your office for language on that item.

>> Mayor Reed: Okay, anything else on that we have a motion to approve. All in favor, opposed, that's problem offed. We'll move to item J on our agenda and take up the consideration of the release of 911 tapes and police reports of the fatal shooting on May 10th, 2009. We have previously considered request for release of the tapes a few weeks ago and we've had additional requests for additional records in that matter. And so we're going to take both of those up together, I think, that way people who need to speak can speak to whatever's on their mind. I do have some requests from the public to speak. We'll get to that in a minute. And I'd just like to make a couple comments before we get into the hearing. Is that since -- well, since I've been mayor the council's approved Reed reforms and sunshine reforms that have made a lot of changes. Probably about 70 or so. And many of those changes have modified the way we deal with public records act requests. Probably 95% of public record act requests are just handled at the staff level, done within the very short time period. But some small percentage are more difficult. We have one of those in front of us today. And what we're doing here is the result of some of the changes that the council have approved and how we handled requests. We have this hearing, essentially an appeal to the Rules and Open Government committee on a public records request act matter. It is a new process, we've had a few other appeals and it is something that this committee recommended to council to approve to make it easier, quicker and for people to get answers on public records act requests where there is some kind of dispute or difference of opinion about whether or not things should be released. I want to welcome all

of you, who are here to participate in this. We will handle this pretty much the way we handle other issues on our agenda. We'll have a staff report, take public testimony and then the committee will have to decide what to do. So with that I think we'll turn to the staff report which I believe City Manager will start.

>> City Manager Figone: Thank you, Mr. Mayor, members of the committee. Before we get into more detailed discussion of the request for release tapes, transcripts or records, I do want to begin by framing our discuss. From my perspective there are three key considerations today for the Rules Committee, as you deliberate on your decision on what information to release regarding the officer-involved shooting death of Mr. Daniel Pham. The three considerations that I believe that exist and symphony to the balanced are first of all the high communities interest in this case in understanding with what happened. Second is the privacy concerns for the individuals directly involved and the third is the recent city council decision on the release of public records. And while I am sensitive to the privacy concerns of the individuals of the 911 tapes and understand that there are still ongoing discussions either with attorneys or with individuals that are on the tapes, I do want to express that I believe in this case that there are clear and compelling reasons to provide as much information as we can. I do want to be clear, however, that I do not see today's decision as setting a precedent regarding decisions to release reports, tapes or any other sets of information that may be requested in the future. And I do believe that the decisions about releasing police records should be dictated by the specific nature of the circumstances under review and on a case-by-case basis. As the council knows, your recent decision on police records requires the disclosure of a summary of the crime report. In this case, however, I believe it's appropriate for the Rules Committee to consider recommending the release of information that is not limited to city policy or the California Public Records Act. And I say this with a caveat that any action taken today by the Rules Committee or recommended by the police chief again should not be viewed as a predictor of how the city might approach future decisions with respect to the disclosure of public records. It also should be noted that some of the information that has been requested is not in the City's control. For instance there have been requests for Mr. Daniel Pham's autopsy report. The county medical examiner and core nor's office is the other than of that public record and based on discussions between the city attorney's office and Ms. Melissa Kineaklis, lead Deputy County Counsel, the county medical examiner coroner's office will be contacting the requestors directly. So with that introduction, I will turn it over to the chief of police who has some comments, and then staff is available to answer any questions.

>> Rob Davis: Yes, thank you, Deb, and good afternoon. We are all aware of the fact that there has been much discussion over the past several years concerning the best way to respond to public records act request for information from police reports and police calls for service. Much of this discussion has centered on the balancing tests that need to be done to ensure that police investigations are not hampered, that the ability of the District Attorney to prosecute cases is not affected, and the privacy rights are not harmed, while at the same time meeting our obligations to provide information to the public when requested. Balancing these issues is certainly not an easy one, nor one we at the police department take lightly. We recognize that there is a legitimate need for the public to have faith and confidence in what we do, yet while at the same time we know how problematic it can be to provide information to the public that contains some of the most sensitive information imaginable about victims, witnesses, and even suspects. We recognize that in the case we're here to discuss today that some in our community still feel they need questions answered about how the police responded to the call of a disturbance at a residence that ultimately led to an individual being shot and killed by police. In responding to the request for information we focused our concerns on three main areas. First, we needed to protect the ability of investigators to conduct a criminal investigation about the incident that then needed to be taken to the office of the District Attorney who has the responsibility of determining whether or not to file criminal charges against anyone involved in the case. This was done in this case. We also needed to protect the ability of the District Attorney's office to conduct their own internal review of the case. In this present case the District Attorney chose to take the case before a group of county residents collectively known as the criminal grand jury to allow them to hear all of the evidence in the case to determine whether or not any criminal charges needed to be filed in this case. This too was done, with the grand jury recently declining to issue any indictments against anyone in this case. We also needed to protect the privacy rights of those involved the case, with special attention given to the victim who was attacked in the case, an acquaintance of the victim who communicated with dispatchers during a 911 call, and another individual who called 911 to report the attack. We have contacted the individual not associated with the family who made one of the 911 calls to us, and this individual requested we not release the audiotape of the 911 call. We have, however, made a word-for-word transcript of the call. By redacting the information about

the caller, it would be possible to release that transcript with the caller's information removed. We also contacted the family of Daniel Pham to hear their concerns. I personally have spoken to the father of Daniel Pham to let him know that now that the criminal case and the grand jury are concluded, if they so desired, we could sit down with them to discuss how we could provide them with more information about the case. We specifically wanted to coordinate getting responses from his son and his son's acquaintance about whether they would have any concerns about releasing information in this case publicly. This would include the 911 call made by the victim's acquaintance. We have also been in contact with the attorney's office representing the family of Daniel Pham at their request. They have indicated to us that they would like to sit down and hear the tapes with us, presumably prior to their public release, although we are still awaiting a response from that attorney's office. Additionally, as we have agreed to do by policy, we have prepared a synopsis of the case that goes above and beyond what is required of us to be provided by law or to provide by law. This has detailed information about exactly what occurred during the officer's responses, time frame, time stamp, chronology, et cetera. There has been some discussion about whether to release the policing report itself in a redacted version. It would be possible to do this, with emphasis given to those portions of the report that deal with response to the call as well as statements by everyone involved in the actual response at the scene or those involved in the incident at the scene. Clearly we have concerns as mentioned by the City Manager about setting any precedents about when such detailed cases should be released. Each case I believe must be reviewed on a case-by-case basis. In this case, because of the reasons I have already noted and also noted, I believe, by the City Manager, we believe it would be possible to release additional data beyond that which is required in this case or by law. We are here to further discuss the way that we will determine how to go about releasing that, in other words, the format, what form should it take? Should it be transcripts, should it be redacted reports? We're here to answer questions about what that form would take no matter which way we go, and also to answer any other questions or concerns that you have. That concludes my formal remarks.

>> Mayor Reed: Thank you, chief. Anything else, City Manager?

>> City Manager Figone: We're open for questions.

>> Mayor Reed: Any questions from the committee or do you want to take public testimony? We'll take some public testimony at this time. I have a few people who want to speak. Everybody is already pretty close to the microphone, so I'll just call you and come on down. Ross Signorino.

>> Ross Signorino: Thank you, Mr. Mayor and all of you who are present here. The words that just -- the City Manager just uttered are not to be taken lightly. And neither are the words of what the Chief of Police just uttered should not be taken lightly. When the City Manager said we can release certain information on a case-by-case basis, not carte blanche. And the chief of police also mentioned the fact that you have to be careful not to jeopardize winces. Let's say that a case looks so simple that you can release that particular case and the police may miss a particular phrase or something in those tapes that somebody picks up and jeopardizes witnesses. Nothing real significant, but somebody was associated and then they go after that particular witness. We have constantly come to the point where we are constantly going, mea culpa, mea culpa, mea maxima culpa. No matter what we do, no matter how we try to bend over backwards, the grand jury said there was no cause to bring indictments in this particular case. But are we satisfied? No, we are not satisfied. We still go on the same way trying to demand and demand and put pressure on our police force. If there's something wrong with our police force I said this before then we could do something about that but first we have to be sure also that they have rights, too, and that the job that they are doing is critical to the city, and we are not one of the safest big cities in the United States, just by accident. It just doesn't happen that way. Our police -- our police force solve, anyway, people that are suspects in the killing of that groceryman, over where the bank of the West parking lot and then there was another murder in our parking lot in the convention center. This takes serious investigation by people that know what they're doing. But if we're going to hamper the police department in every way, no matter what, then we hamper ourselves. We have to look for justice in every way, it's true.

>> Mayor Reed: Your time is up. Bert Robinson.

>> Bert Robinson: Hello again. In recent weeks in discussion whether police records ought to be released to the public the department, and city council members, have offered a number of general oaks. Today you have before you a specific request for specific set of records. Few of the general objections we've recently heard apply to this case at this point in time. There's no ongoing investigation. Because it's one case there's no substantial time burden. There's no threat to safety. There's no risk of revealing the name of a confidential informant or vulnerable victim. What is there

is clearly in this case ask an overwhelming public interest in favor of disclosure. A mentally ill man died at the hands of police. There is significant question about what the police knew when they confronted him and what they did. The only way to begin to answer these questions is to release the records that are being requested today. When I say the records, I don't mean a transcript. I don't mean a summary. Whether it is fair or not, there is a significant issue of police credibility in this case, as there would be in any case with any police department in which questions about the actions of members of the department are being raised. Only the actual records of the incident will suffice. A police report, including witness statements generated before the controversy over Pham's death ensued is more credible, a 911 recording made before the controversy is more credible than the transcript prepared afterwards. Clearly some of the people in this room today or at least me have a disagreement with this committee over its general approach to police records. But what I have heard consistently from this committee is that it is willing to use its discretion and its good judgment in individual cases. Last week in response to the organization Debug, the city attorney's office suggested that it would not release some of the records Debug was requesting simply because it doesn't have to. No one in this room doubts that the city doesn't have to release these records. The question before you today is what you should do. I cannot imagine a case for public disclosure more compelling than this one. I call on the committee to do the right thing.

>> Mayor Reed: Teresa Nguyen.

>> Good afternoon, I am Teresa Hang. I'm an attorney. I represent Daniel Pham's family. I request my client Daniel Pham's family to review the 911 tapes. And I also on to any release of the 911 tapes of the shooting of the death of my clients until the tapes are first reviewed by my client's family. To date, numerous requests have been made by my office for the family of Daniel Pham to have access to the tapes, but so far we have received zero cooperation. It would be both traumatic and a violation of my clients' privacy for them to read about the 911 tapes in the news before hearing them, themselves. Thank you.

>> Mayor Reed: Van Le.

>> Good afternoon, mayor and city council members. My name is Van Le, and I'm speaking on behalf of Vac Na Kel, to request the committee to approve the released 911 tape and all police reports relate to Daniel Pham case. This will help Daniel rest peacefully and family members know all the facts and issues around the death of their son or and brother, so they can move on. We hope to see the transparency and the fairness from the police department and from the city leaders to reveal the trust and public confidence. Thank you.

>> Mayor Reed: Richard Conda.

>> Mr. Mayor, members of the city council, I'm Richard Conda, executive director of the Asian Law Alliance. I'd like to ditto and agree with Mr. Robinson in regards to his point of view. We are at a point now where there are many members of the community who have lost faith in the police department and I think that if this group, this committee, can now move forward, and release the information, it will begin to restore some amount of confidence. So I think it's very important that you take a positive action, and release the information, and we -- when we say release, we're asking that the police reports be released. Not a synopsis, not a summary. The same is true for the 911 tapes. We believe that the tapes themselves need to be released. Thank you very much.

>> Mayor Reed: Raj Jaidev.

>> Good afternoon. I'm a little unsure what the conversation was before this, because the audio wasn't playing outside, and we were told to come to the hallway, which kind of left us in the dark. So I apologize if I repeat some points of previous speakers. On behalf of my organization, Silicon Valley Debug in collaboration with Richard Conda of the Asian Law Alliance, the Vietnamese American community association of Northern California we have been working with the Pham family and Vietnamese community to try to get answers as to why Daniel Pham is dead. We got a response from the city attorney's office saying that this committee was going to make a determination on whether certain aspects of our requests will be released. What I wanted to make clear is that what the total request is for is not just the 911 tapes. Although that's what's dominated the headlines, and the media, what we're asking for is the entire case file. So I wanted to put again on record what was officially denied to us, the public, that has really strong vested interest in finding out these answers. We were told specifically, and this was responsive to public records request, that we would be denied all police reports written in the Danny Pham case, all witness statements, no matter how memorialized, including the sayings of the officers alleged to have killed Daniel Pham, all crime scene photos, video, et cetera taken during the course of the investigation of the Daniel Pham case, any and all diagrams, related documents reporting,

reflecting the manner in which the shooting taser death of Daniel Pham occurred, the entire case following Daniel Pham and any and all records relating to the Daniel Pham case. The reason I wanted to bring this up, we giving if public a piece of the pie and perhaps the piece of the pie that has already been vetted. And what we need to build trust is a full disclosure, and act of good faith. And this is not an issue of only transparency and civil rights, it's an issue of public policy. Strategically city leadership and the police department and community cannot strategize how to avoid potential future deaths such as Daniel Pham if we don't have everything on the table to examine, problem solve and create a way out of it so the next Daniel Pham case doesn't happen again. That's why I think it's important and mandatory to release all records.

>> Mayor Reed: That's all the cards I have on this particular item. I do have cards elsewhere on the agenda so we'll get to that. That's it, let's bring it back to the committee for discussion. The committee, three or four weeks ago, I can't remember when, discussed the 911 tapes and came to the conclusion that those ought to be released. After the investigation has been completed. So as I understand it, PD investigation was done, different's investigation was done, grand jury heard it, and there's no pending investigation. So I think I'm in the same place I was then, which is, the tapes ought to be released. In addition, the rest of the documents, I think we should release as much as we can. There are limits under state law, we need to follow the law, there are items that need to be redacted to protect the identity of undercover officers around other witnesses, but fundamentally, I think the documents should be released. This may be shocking but I pretty much agree with Bert Robinson pretty much for the first time in a year. Because I think it's important to do that. There are a lot of reasons not to release information, we've had discussions from time to time. Identity of witnesses, undercover cops, cost is sometimes a factor. I don't think any of those in this instance outweigh the public's interest in getting the information out and I think we ought to try to figure out a way to get it out in a way that can be done relatively quickly and in a fashion that people can have access to the information. And so I have a couple of questions. There are some things that have been requested that we don't have. Is that we don't have them, or we have copies, and they really belong to somebody else, and is there something we can do about those? That's one question. The other question is, I think we ought to allow the Pham family to have the first hearing of 911 tapes so they don't have to watch it on Youtube or wherever else it might be broadcast, so giving them an opportunity to do that first I think would be helpful. And then the other question on the technical side is, the tape from the neighbor, is there a way to clip out the name and the address on the tape, as opposed to doing it on a transcript? So those are the technical questions I have.

>> Rob Davis: I'll take them in order, mayor. First the owner of records. Yes indeed there are times we would be not the owner of a record, say for instance an autopsy report which is done by another government agency. The keeper of record if you will really is the appropriate person to approach for that type of a record. So although we have a copy of it we would be referring that people to the keeper of the record to make that public records act request. They can certainly make that, and those people would need to make the determination whether or not to do that. I also agree I think that it is very important to try and respect the rights of the Pham family. We have made several phone calls to the attorney's office, one just as recently as today, to try and establish a time when they can do that. This is not so we can try and avoid releasing the 911 tapes, but they I think should have the right for privacy issues to listen to that and then go forward at that point. We don't have issues with releasing them, the actual audio tapes, for that particular audio tape, I think -- and one of the reasons is because the family themselves and some of their acquaintances are the ones that are demanding the release of the information. So I don't know how we could meet their expectation to release records if we didn't at some point release that tape. My biggest concern is the last one that you have mayor. Is that remember there are two 911 tapes here. The first, one of the 911 tapes is from a resident in the area. And the other one is from the Pham residence. The one at the Pham residence is the one that the the lengthy tape because we have -- we hear what's going on and we hear things in this case. That's where the information really about the case lies and that's the one we are suggesting we could release. The other one relatively brief call where even if we took the audio tape and redacted kind of cut out somehow blanked out the parts where the individual is speaking if you release the tape people in the neighborhood will know who that person is, so there is no way to restrict the identity if you release the audio tape. We are suggesting only for that one 911 tape to do the transcript for that resident so that individual is not fronted in the community. We're also concerned to do that because when we go to them and ask how their feelings are on this we're not trying to dissuade anybody in our community from calling 911 for fear that somewhere down the road a 911 tape may be released and they're on it and not want that on there. You can see in terms of gang crimes where that

would be important. We're asking for that short 911 call that we release the transcript only to protect the identity of that person who has requested the anonymity.

>> Mayor Reed: Any other questions or comments from the committee? Councilmember Constant.

>> Councilmember Constant: I had a question I guess for the City Attorney just so I'm clear on the comments on the autopsy report. I know, like in our office, I've been taught that once I receive something, it becomes a public record. What makes this different, if it's part of the case file, and it's part of what gets put forward in a criminal investigation to the courts?

>> City Attorney Doyle: I think exactly that, as part of a criminal case file you have discretion to turn it over or not but you're not required to. The issue I think and maybe the chief has alluded to this is, when you work with other law enforcement agencies or other agencies such as the county coroner, there's cooperation and documents are shared because I guess the assumption is that it's going to be kept at a minimum whether we release it, we should at least work -- or the county coroner releases it, we should at least work with the county coroner to make sure they're comfortable that whatever is released, whether it comes from the police department or the county coroner's office, that if anything is released they're comfortable with that because they are the ones that generate that document and we want them to continue to work with the police on cases so that would be my suggestion.

>> Councilmember Constant: Okay. And then chief, on the second 911 tape, the one you have concerns about, I guess without getting to the content of it, I guess I'm not understanding why we can't beat things out or you know, over sample them, in certain areas.

>> Rob Davis: Well the issue would be that even if you blanked out certain things it would identify addresses or names or something like that. When you play the rest of the tape, people can identify your voice and this individual does not want to be identified.

>> Councilmember Constant: Oh.

>> Rob Davis: You could take the tape I suppose and do something really strange to it to try and change the voice but at that point you're just creating a vocal transcript of what's being stated, so --

>> Councilmember Constant: I just wanted to understand those two areas a little clearer. I too am shocked that I agree with Bert Robinson 100%, which is kind of an interesting occurrence, that stars must be aligned appropriately. I think the mayor has pretty much covered most of the issues and comments I would have covered.

>> Mayor Reed: Vice Mayor Chirco.

>> Councilmember Chirco: One of the things I heard Bert Robinson say was the actual documents, the reports. And as I understand it, you were indicating doing a written --

>> Synopsis.

>> Councilmember Chirco: Synopsis.

>> Rob Davis: Right.

>> Councilmember Chirco: Why can't you give him the original documents with redacting --

>> Rob Davis: My statement actually alluded that, perhaps I wasn't clear. Let me clarify. There are two avenues that we could take, we could write a very, very very detailed synopsis that goes above and beyond what we're required to do by law and even what is required by the new council policy in terms of police reports or we could take the original reports and just spend time redacting them. It is either of those two pieces that we could bring forward.

>> Councilmember Chirco: Because the concern I heard is that the opportunity to modify the information is a concern. And I think redacting in this case would be probably a more appropriate way to go. And you mentioned on the second 911 tape, that if you ran it through a second recording and in some way altered the voice you are basically getting a vocal transcript. And I don't know that I agree with you. Because you're giving the actual language and the words, rather than a transcript. So you avoid the possibility of people thinking that you have not completely presented what was actually said. So I would be more interested in that kind of a technique, if it's technologically possible, and believe me, I'm the last person to preach technology to anyone. So I would have to leave it to those that are professional in the field. I think that's a legitimate concern. And just because it's kind of fun to throw Bert off balance, I also agree with him.

>> Councilmember Constant: I thought it was just me.

>> Councilmember Chirco: There you go, Bert. That's how I feel about this and I support what the mayor has said.

>> Mayor Reed: Nancy.

>> Councilmember Pyle: I too am in support of the mayor and Bert and I do want to say however, I want to make sure that I heard this properly. That the Pham family would hear the tapes first, is that correct?

>> Mayor Reed: I think so. That is what I would propose.

>> Councilmember Pyle: I would like to make that a condition that they would hear it first. And that the county coroner would give his blessings in reference to the release.

>> City Attorney Doyle: Yeah, I think it's either the county coroner releases the document or if we get the permission of the county coroner, that we would release what we have, if we have it. I don't know what's in the file.

>> Rob Davis: I believe that there's already been some information released by the county coroner to respond to that public records act request. I don't know if it's an actual copy or if it's a redaction or a synopsis but I believe something's been released.

>> Councilmember Pyle: So I would like to make a motion with those two caveats attached or those two conditions.

>> Councilmember Chirco: Second.

>> Mayor Reed: We have a motion to release the reports, not the transcripts, with some audio modification of the voice and clipping the third party neighborhood person. But to actual have an audio of that. And then, the coroner's one, I've got a question about that as a matter of -- since we haven't done this very often as a matter of policy, do we want to say, we are not going to release somebody else's document unless they give permission, or in releasing the document we are going to give them a chance to tell us why we shouldn't and we'll make the decision one way or the other?

>> City Attorney Doyle: Again, these are going to be case-by-case and we don't do this all the time. I think in most cases when you get documents it's we're going to release it unless somebody objects. I think when you have criminal cases and you're working with the sheriff's department or the county coroner or other law enforcement agencies, the FBI, I think it's important to get their buy-in before you release it.

>> Mayor Reed: Well, I certainly think it's important to maintain the willingness of other agencies to give us their documents and the question is whether -- we're not going to release somebody else's document, never is a pretty long time versus we won't release your document unless you get a chance to object, and to convince us why we shouldn't, and there's two different ways to approach it. And since this is sort of the first, and we're not setting a policy or anything, this is about this case, I think the real question is, has anybody talked to the coroner and do they on to releasing the documents? And if so, I'd kind of like to know why.

>> Lisa Herrick: Mr. Mayor, Committee, Lisa Herrick from the city attorney's office. I did speak with Melissa Kineakalis who represents the, medical examiner coroner. I offer a really practical response because the request -- the public records act request asked for more than just the autopsy report, they wanted some forensic testing, I just wasn't aware of what was in our file. And I thought it was a more practical thing to do to alert the coroner's office that this request had been made. Although the original request had been sent to the District Attorney's office, I'm not sure it made its way to the coroner, since I knew the attorney who represented the coroner, I suggested she contact the coroner directly. That's why we did what we did.

>> Mayor Reed: ?

>> Appropriate redactions and that the coroner's action is going to work with the are requestor.

>> The public records act we received was not just us but it was also to the District Attorney's office for the same information. So they were trying to get the information from either or both.

>> Mayor Reed: Well, if the coroner is in the process of responding I'm happy to let the coroner, for whatever reason decides they're not going to respond and not going to give it up, I'd rather have our position of whether we should do it if we give them a veto or not or just have a discussion on it. So I think I can support the motion as formed. But knowing that the coroner's going to move ahead on it, we could revisit that if they don't ultimately get the documents. Because I think it's in our interest, the public's interest to get the documents out there and that includes the autopsy as well. If the coroner does it, then fine.

>>> I have another question about the timing of doing these things. I know we've had a lot of talk over the past months about the difficulty of doing redaction, how long it takes and I have no idea how voluminous the file is, the 911 tapes are pretty easy, electronic transfer. But what about the actual reports and the documents and the time necessary to do the appropriate redaction? How long do you think that would take?

>> Rob Davis: Well, clearly because we're looking at the parts of the report that aren't involving the administrative, technical vesting follow-up and concentrating on those police issues at the scene the statements of the witnesses the statements of the suspects the officers involved the 911 issues et cetera all of that could be done I think within a week's worth of time at least from our shop. We would then need to turn that over to the city attorney's office for them to review to make sure that there's nothing we've missed as we have done in the past so I think it's not a long amount of time, shorter rather than not and in fact the direction we would be giving to city staff or police staff is, if you can get it done tomorrow, get it done tomorrow. So just as quickly as we could we would finish that get it over to the city attorney's office and let them review it and let it go. One of the problems that we've got, and I would hope that everybody's very clear about this, is when you are releasing the actual reports, because it's in its raw format, and it's not taking a synopsis view, everything is not linear, it's not chronological. You're just going to get this hunk of reports that people will take into context about what the time frames are, what people knew when they knew it, what the officers knew when they responded, where the people were. I mean it took a long time for us to put a case together to take over to the D.A.'s office and a while to take it to the grand jury because all of that stuff is not linear, it is a very, very complex process. I hope as these reports get released people will take that into account, what they new when they knew it and et cetera, et cetera. You're riding from a page of a police report where somebody is make a statement and there's a police report two pages later that constructs what somebody said over here. Without doing it the way we normally do it, it's out of context and we're cautioning people when they read these reports.

>> Mayor Reed: Content, post it to the Web, nail it to the ham of City Hall, how do you release these things?

>> Rob Davis: I think basically because of community interest, we would do it on the manner that people are -- if we put it on electronically that could create some issues with people involved, we're releasing them, what people do with them when it's out of our hands.

>> Mayor Reed: Anybody can have access to it all at the same time equally as long as they don't crash the system while trying to get it at the same time. That's one reap. The other reason is if we put it in a PDF format, we know exactly what the document is, it can't be changed unless you work for Adobe, I guess. At least we have control over it. Because if you have a hard copy, people can take it, take it apart, use it in different ways. Electronically, at least we know what form it was in when we last had it. I don't know if the City Attorney had any comments on how long it would take the City Attorney to review the redaction work.

>> Rob Davis: It would clearly add a little time if we put it on PDF but I wouldn't anticipate that it's extensive.

>> City Attorney Doyle: We have staff that would look at it as quickly as possible. And unlike the other large request where we had hundreds of files that we had to go through, this is just one file. And not knowing the contents of that file, or the size of it, I can't give you an exact but we would work as expeditiously as possible to get it out.

>> Rob Davis: It would be a lot of pages, mayor.

>> Mayor Reed: I'm sure it is a lot of pages. The average file is pretty thick, we know that. Councilmember Constant.

>> Councilmember Constant: You know, the chief made some comments about the context of the reports. And I think kind of in the greater context, one of the things that I would like to see, and I haven't had a chance to speak with Rob about this but I have a few other people, is what is our ability to release or provide to the public the training that's provided to officers on edged weapons? And I know when I went to the police academy and multiple times during the annual trainings, there are films and training scenarios that really talk about the danger of edged weapons and really challenge the perceptions of what edged weapons are and what their level of danger is. Is that something that we would be able to release as well, or have some public venue for that to be shown?

>> Rob Davis: My sense is to the extent we weren't violating any copyright laws, if we purchased these videos and yet we are copying them and providing them to the public we might run into an issue with that. But clearly, we allow the community to come in and see those videos and go through the training through our community policing program with our citizens academy. As I mentioned we're entering the fifth week tonight of the citizens police academy Spanish speaking only and they're going through some of this training. I asked if we purchase training videos to what extent could we copy them?

>> I think might be a copyright issue.

>> Councilmember Constant: It is something we should look at it. When some people are reading the report, I think it's a good context to deal with people who have been trained perhaps in those types of situations.

>> Mayor Reed: Nancy.

>> Councilmember Pyle: I had a quick question, that is, the space of time, between when the Pham family, who we know has been through enough of a trauma at this point, and the viewing of the public, what would that time frame look like?

>> Rob Davis: Now that we have the attorney here communicating, we'd set up the meeting with them as soon as possible. We'll accommodate them as soon as they can do it, we'll sit down with them and let them listen to this stuff so we can get an answer as quickly as we can.

>> Councilmember Pyle: So conceivably, they would see it the day before it became public?

>> Rob Davis: Conceivably. Conceivably, yes. And we don't have to release this stuff all at once, either. I suppose we could release the audiotapes at some point and anything could follow. But it might make more sense to try and keep it all in context and do it at the same time. But we could go ahead and have the staff continue to do the redacting while we're meeting with them, so that as soon as possible we could release. We're not trying to lengthen the time that we're taking to do this at all.

>> Mayor Reed: Speaking of time, can you get it done, Chief, in your piece of it, by a week from today?

>> Rob Davis: I believe we could. I believe clearly we could get ours done, it would just be a matter of whether --

>> Mayor Reed: And city attorney, can you get it done two weeks -- not two weeks, two days after the chief gives it to you?

>> City Attorney Doyle: We can get it done. I will commit that I will report back at the next Rules Committee, not the special meeting but the next Rules Committee if in fact there is a problem, or at least give you a status that it's either gone out or if there is a delay, why there is a delay.

>> Rob Davis: I haven't talked to Rick about this earlier, but hopefully, he wouldn't take umbrage at this, but if we worked in tandem, if we were actually redacting and had somebody from the city attorney's office working with us in tandem, we could basically do it in a synchronized fashion so it would be quicker.

>> Mayor Reed: How about by noon Friday, one week from Friday?

>> Rob Davis: I believe it could be done.

>> City Attorney Doyle: If that is the committee's desire, we would work from that.

>> Mayor Reed: Post it on the web, that way everybody can have it at the same time.

>> Councilmember Constant: So can I just make a recommendation, I think we have a motion already on the floor.

>> Mayor Reed: We have a motion on the floor.

>> Councilmember Constant: But -- and I don't know if Teresa bands to jump in on this at all -- wants to jump in on this at all. The only caveat would be a certain time after they have an opportunity to view the tape and I don't know what would be comfortable, 24 hour, is that enough time in when you and your clients were to listen to the tape for it to be released?

>> I'm very sure that my client will be -- make themselves available at the first opportunity or at least (inaudible) some 24 hours (inaudible).

>> Mayor Reed: Well, we're talking about a release, a week from Friday at noon. That's plenty of time for everybody to do whatever they need to do. And just got to work to that deadline. And since we're already in contact with the family, we got the lawyers, I mean, how hard could it be to get it done very quickly here. Let's just assume that that would be done. So the maker of the motion, could we add noon on Friday a week from Friday as a release time?

>> Councilmember Pyle: Absolutely, uh-huh.

>> Mayor Reed: PDF it, post it on the Web, and then get a WAV file, or whatever you do with the audio.

>> Councilmember Constant: That was pretty technologically savvy there.

>> Mayor Reed: Yeah. WAV files are probably old anyway.

>> Councilmember Chirco: Whose Website?

>> Mayor Reed: Which website? Where's the best place to post it?

>> Rob Davis: I'd defer to the City Attorney to give us an answer.

>> City Attorney Doyle: Either the police or the City Clerk. I think the -- she's in charge of, as custodian of records, and not to add to her burden, but we would get it to her just to post up on the city's Website.

>> Mayor Reed: What time do you want it Friday, in order to get it posted by noon? 10:00, 9:00?

>> Lee Price: Last time I said that, I got in trouble for it. So by the end of the day.

>> Mayor Reed: On Thursday, the day before?

>> Lee Price: To have it posted by noon?

>> Mayor Reed: By noon on Friday, end of the day on a Thursday, to post on Friday at noon?

>> Lee Price: No, we could have -- in the morning on the 13th. As long as we have it in the morning, we can go ahead and set up the Website.

>> Mayor Reed: 10:00?

>> Lee Price: 10:00, yes.

>> Mayor Reed: 10:00, okay. Everybody knows when they've got to perform.

>> Just so we're all on the same page, November 13th, we're referring to a week from Friday.

>> Mayor Reed: Week from Friday, November 13th. Friday the 13th, can't forget that one. Anything else on this? We have a motion to approve. All in favor, opposed, none opposed, that's approved. I want to thank everybody for their participation. I want to extend my condolences to the Pham family. This is a tragedy to our community and we're really sorry bit and hope that the family has a chance to heal. All right, now, back to the other parts of the agenda, which would be next, the public record, anything from the public record that the committee wants to pull for discuss?

>> Councilmember Constant: Motion to note and file.

>> Second.

>> Mayor Reed: Motion is to note and file, all in favor, opposed, none opposed, we have -- we've got some requests to speak but on other items. Come to that. We have nothing on appointments to boards, commissions and committees. Item H-1, recommendation from Councilmember Oliverio to adopt and ordinance to allow the cultivation of medical use of cannabis in San José, I do have at least eight cards to speak on that. Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor Reed and the rules committee. Trying to turn off my Blackberry so there's no backfeed. I want to be simple and to the point, we have a memo that's asking to the rules committee to bring in a conversation at the council level on the implementing an ordinance for the medicinal use of marijuana. There are three main items here. One is the compassion of those that suffer from illnesses that are many times fatal but suffer in great pain, whether that be multiple sclerosis, cancer, HIV, AIDS. The second item is shown by the City of Oakland and other places across the country, it is a source of revenue for cities in a time when we're struggling with a good-sized budget deficit, money that would go to the general fund and also money that would go to Planning, Building, and Code Enforcement to employ those that are doing the inspections and approving the applications for these medicinal marijuana dispensaries. And the third reason is if we don't do it, they will come. With the implementation of SB 420, which took the will of the voters of proposition 215 in 1996, where 64% of Santa Clara County supported that. SB 420 tells on how it should be implemented, the use of medicinal marijuana. Furthermore attached to the memo is our attorney general of California who gave more information on that and finally on October 19th the Obama administrations attorney general basically said that any state which has passage of medicinal marijuana, which is 13 states, they will no longer be looking to doingfully prosecution of any kinds. That can open the doors, we cannot do anything and let it go through the courts and we'll not farewell now, I point out to Los Angeles who has over 500 dispensaries, and they recently went to court to pass an ordinance to limit them and they lost. So I think it's pragmatic to get out ahead of the issue, acknowledge where state law and federal rules are today. Again, managing a city of a million people, unfortunately out of that million people we have people that suffer from these diseases and that we should move ahead to decide where we want them, where we don't want them, how many we should have, look at a way to see what the revenues are going to work on that and then managing all the inspections that would need to go with this. Just for a little bit of feedback, the additional marijuana dispensaries, they do not go out to the black market and procure marijuana from organized crime. Proposition 215 through a doctor's recommendation those people have the ability to grow cannabis. That basically becomes a collective. And that's the collective that supplies them. So we really have to tackle the topics of not only where it's dispensed but where it's cultivated and make sure it's cultivated in a safe manner, not in ways that are problematic. I think it's worthy of council discussion and I'd like for it to have the opportunity to go there. I'm always cognizant of things we wish to do in the city. I would say this, this is a lot of -- we spend a lot of time on owners in San José but not every ordinance has the ability to help people that are suffering and bring revenue to the city. We do other ordinances that do not tackle those serious topics and the memo is pretty specific on outlining the background, the fee structure, and, of course this is a proposal of the council and staff will come up with a final ordinance, in addition, you know, I chose the idea of industrial land as one of the primary locations because it's not

close to schools or churches, historic typically and also it raises the value of industrial land since we're faced with so many industrial land owners trying to convert their land to housing, and we know what that effect is on the budget deficit. So therefore they make their land more valuable, but again, the council can decide where that might be the best place for. And then finally making sure that people are dispensing it to the correct people. So there's an -- on item 5 it talks about a thousand dollar fine for people that would pass marijuana unlawfully to someone that's not recommended by a doctor who takes a Hippocratic oath to take care of their patient. That's it. I know there are comments from the Rules Committee and people in the audience. So I'll delay my comments.

>> Mayor Reed: We do have a stack of cards for people who want to speak. I had some comments from staff first. First we need to do workload assessment on this. If I know the zoning ordinances that are being done, there is 28 or 29 ordinances that the council has already asked the staff to do.

>> Supervisor Yeager: Where does that fall within the priority? Laurel Prevetti is here.

>> Laurel Prevetti: Thank you very much. Laurel Prevetti, assistant director of Planning, Building, and Code Enforcement. The mayor is correct, we already have a long list that council has already directed us to do. While the councilmember is making a compelling and thoughtful case, we would respectfully request that after the workload assessment is completed that the council choose what to take off the list. At this point, the council will be considering budget reductions on November 17th, one of those is the deletion of the staff that assists our ordinance teams. We will be down to one senior planner. And to complete this fiscal year we still have the sign code update, form based zoning for Alum Rock and as well as our work related to streamlining and reducing our costs to our customers. We are happy to do this work. We want to make sure that the council understands that something will have to be removed from our work plan.

>> Mayor Reed: The other question I have is, what if we do nothing? Either I have a misperception or there is public misperception. We don't currently prohibit the sale of marijuana in the City of San José. If Long's, CVS or Walgreen's wanted to start sell it, they wouldn't have to ask our permission. Am I wrong about that under our zoning code?

>> City Attorney Doyle: We don't prohibit it, we don't permit it. And that's the question we have to get back to you on. The view has been that it has been an illegal use under federal law, and we don't permit illegal uses under our zoning code. But that has been our view, given the attorney general of the United States missive, he is not going to enforce, I think we need to research that and get back to you.

>> Mayor Reed: I think there's a question whether no permit is required, if no permit is required people can exert their rights and do what they want to do. Second, do you need a permit from the City of San José to grow and cultivate marijuana in San José. Again, I don't know why you would need a permit from us to grow something in your backyard, I'm growing tomatoes, I didn't get a permit to grow tomatoes. Do we have something in our zoning code that says you can't grow certain plants?

>> City Attorney Doyle: No, that's a good point. What you do in your backyard is, as long as it's lawful it's not a zoning issue.

>> Mayor Reed: The issue is whether or not it's legal under state or federal law. We don't allow illegal uses. But that's not probably a zoning question. So then the question is, if we were to do nothing there's a potential for these facilities to locate in San José, in places that we don't control. We at one time had a zoning ordinance that dealt with it, back adopted in 1998, I believe, which got dropped out of the zoning code in the big rewrite of 2002 or 2004. And so I think one of the questions is how much work would it take to get it back together and have we already done a lot of work on it. And I think that's part of the workload assessment that ought to be looked at. But I think the biggest question is, how important is this relative to other things on the staff's list, and that's a question that the council has to consider from time to time because we always have more work than we can do.

>> Councilmember Oliverio: And to that point, mayor, the council made a decision to bump bail bonds above and beyond everything else. I think it would be imprudent for the council to decide, compassion for those suffering should that be bumped up and I think that's a council discussion.

>> Mayor Reed: On the revenue it would require a vote of the people to impose a tax, right?

>> City Attorney Doyle: If you're looking at a new tax, yes.

>> Mayor Reed: Okay and the state of California is looking at the possibility of a tax as well so -- they might preempt the fields if they haven't?

>> City Attorney Doyle: They might, they might. I think anybody doing business in the City of San José is subject to our general business tax. But if you are looking for something over and above the amounts that

are paid, it would require voter approval. I don't know the status of any state legislation, if we're preempted or in addition to.

>> Councilmember Oliverio: Question for the City Attorney. City attorney, in San José we regulate the card clubs. They both pay a tax, and I think it's the card fee or table fee.

>> City Attorney Doyle: Table fee.

>> Councilmember Oliverio: So certainly San José could consider construing a table fee mechanism to manage that for, you know, costs that we may feel that for the perfect way to manage that in the city and have that fee pay for those services, without a vote of the --

>> City Attorney Doyle: To the extent it's a regulatory fee it's cost recovery. And that is something that we can impose without a vote.

>> Councilmember Oliverio: Okay.

>> City Attorney Doyle: It's the tax issue that would go to the General Fund that's the issue.

>> Mayor Reed: It would be good to go to the General Fund. Councilmember Constant.

>> Councilmember Constant: I think you hit several of my points already. So I won't have too much. Just the tax versus fee issue concerns me whether we need to go to the voters because we know the cost of elections and we know that the fee is limited to cost recovery. So coming up with a 3% might be difficult. What about permit application fees? That's mentioned in here, under item 3. Are we limited to cost recovery there, as well?

>> City Attorney Doyle: And that, I'm glad Laurel's here. That would really get to the cost of her staff, having to process permits, and it is cost recovery.

>> Laurel Prevetti: That would be cost recovery, as well as the proposed inspection. We could impose a fee to recover those costs as well but we could not create a tax that would provide additional revenue into the General Fund for some other purpose.

>> Councilmember Constant: Okay. And then item 5, looks like it would be creating a municipal code that talks about the unlawful distribution. Now, we could set that fine at a dollar amount as long as it comports with whether it's a misdemeanor, being less than whatever the threshold is there, is that correct?

>> City Attorney Doyle: Yes, I would want to get back to you on that. I don't know to the extent there might be state laws that govern that, you're probably as well versed in the penal code sections as I am so we'd have to get back to you on that.

>> Councilmember Constant: My question is where do we have jurisdiction over the penal code and if we could actually bring revenue, fine revenue in through that or would it have to be handled through the court system as a criminal versus a civil type fine.

>> Mayor Reed: If it's criminal the District Attorney gets the money.

>> Councilmember Constant: Everybody but us seems to be --

>> Mayor Reed: Everybody but us.

>> Councilmember Constant: Yeah. And then just a question on number 3. Which is the earmark account. Other than our enterprise funds, is there anywhere that we do these funds? I know we had a discussion fairly recently with the audit from animal care services about using that in case of cost recovery? I know we have other things, the appeals hearing board. Is there anywhere else that we do this, and would we be worried about precedent-setting and kind of funneling money -- I'm not asking for an answer right now, just part of the whole discussion that we're having in the research.

>> City Attorney Doyle: Let me just generally answer. To the extent it's cost recovery, can you only pay for the programs. To the extent you get fines you can probably earmark for special purposes. To the extent you have tax moneys, if it's a general tax, it's got to go to the General Fund. And then it's a policy question, every budget year the council decides where it wants the money to go. If you want to earmark it for a special purpose, then it's a special tax, and that requires a two-thirds vote of the people. So that's --

>> Councilmember Constant: I just want to make sure as we look at these proposals we're looking at each of those so that we don't have issues later. Other than that I just want to say, the subliminal message of a green tie is good today, I don't know whether that is --

>> Councilmember Oliverio: It is my Wednesday tie.

>> Councilmember Constant: Yes.

>> Mayor Reed: Nancy or joyed, anything?

>> Councilmember Pyle: No.

>> Mayor Reed: I had one other thing. That is, we will be looking at revenue sources as part of our work up to the budget process. This is clearly a potential revenue source, and if we decide that we're going to

put things on the ballot, you know we'll go through that analysis like we did last year and decide how many we can afford to put on the ballot. So just the fact that it has to be approved by the voters doesn't mean it's something that we might not do.

>> Councilmember Oliverio: It did pass with 80% in Oakland.

>> Mayor Reed: Did you have something, Vice Mayor?

>> Councilmember Chirco: Well if -- I think the first thing is to have the legal discussion on what we can and can't do. On a personal -- this was many years ago -- I watched a mother buy drugs on the street, because nothing was helping her daughter, who eventually did die of cancer. So I know the heartbreak of something that does bring relief. And is criminalized. So let's do some questioning and look at work loads.

>> Mayor Reed: Okay.

>> Councilmember Pyle: I'm pretty much coming from the same area. I don't know what we can do and what we can't do. I think it's certainly an idea worthy of discussion. But I'd really like to start with all the facts.

>> Mayor Reed: Staff, how long do you think it would take for you to get back to us with some of the answers to these questions, workload issues, things like that?

>> City Manager Figone: My further discussions with staff, it's probably a good 30 days. They need the time to do the work and then we got to get it out to counsel, so that's at least a week in advance. Laurel could you comment on that?

>> Laurel Prevetti: Yes, I would estimate 30 to 45 days. We are at a crush trying to end a lot of the work that's at the end of the year for our developer customers and then of course we're looking at the discussion on all of you on our sign code. We are looking at 30 to 45 days. We can work with the city attorney's office on whether we combine our work loads together or do them separately.

>> City Attorney Doyle: I think we would work to combine them to get the information as quickly as possible.

>> City Manager Figone: And part of that it's not only the workload but some of the initial policy scoping that would perhaps start to triage many of the questions that have been asked, for example, what happened to the 1998 ordinance? Is that something we can just dust off. It's not just about the number of hours but beginning to scope the work to be responsive to the request.

>> Mayor Reed: Okay, I have a lot of people who want to speak on this. Why don't we do that?

>> Councilmember Oliverio: Mayor, quick question, would we be able to have that workload as a council discussion, late December or January?

>> Mayor Reed: I think we would bring it back here with some sort of a report in a couple of weeks or something with a discussion of when to get it to council would probably be the best way to do it after staff has the chance to do some of the scoping and then begin to figure out how long it is going to take to get it ready. Why don't we bring it back -- we do meet in two weeks. The 18th. Is that our next regularly scheduled one?

>> Lee Price: Yes.

>> Mayor Reed: We can talk about it then in terms of the scope of work necessary to do the work. We are just about out of time for this committee meeting. We are about to lose quorum. So I'm going to have to limit public testimony to a minute. We're not making a substantive decision today. I'm going to just call your names. Some people are in the rotunda. As I call your names, come on down. And staff, I think, will have you wait outside if there's no place to sit out here. Ron Kirkish, James Sooner, James Anthony, any of those folks in the room? Pat Koop or Knoop.

>> First off I want to thank the mayor and the committee members and especially Councilmember Oliverio. For --

>> Mayor Reed: Could I get your name? I'm sorry.

>> Pat Knoop. Any of them will do. Thank you for addressing this issue. Currently patients have to travel long instances, San Francisco, Oakland, Santa Cruz and if you're sick, that's a long way to travel to get medicine. Either that or you have to deal with street dealers, who knows how safe that is, or what you're going to get. But by regulating medical cannabis, you'll be able to control it, it'll be safe for patients, it benefits the city, it's a win-win for everybody. The revenue helps the city, patients are served, and I'm a little bit nervous. I hate talking for the crowds. But I think it's about time it's been -- needs to be done and addressed and thank you very much.

>> Mayor Reed: Thank you. Ron Kirkish, James Sooner, James Anthony, Matt Lucero.

>> My name is Ron Kirkish. I'm a resident of Gilroy and a citizen of Santa Clara County. Recently in Gilroy we did have a vote on a medical marijuana dispensary and it was defeated. And anyway, the reason why it was defeated was because it came to our attention, our elected council's attention of all the problems that are going on in Los Angeles and Santa Barbara associated with the business. I think a lot of you probably know already how hot this issue is. In Los Angeles, they're about to close down thousand of their dispensaries. They grew up, like mushrooms and were not controlled. When I heard what you were saying, mayor, that they can grow anywhere.

>> Mayor Reed: I'm not saying that, and the city attorney is not saying that. That was just a question.

>> Okay, well, that's what I was concerned about when I heard that. That we don't want an L.A. in San José.

>> Mayor Reed: Thank you, your time is up. James Sooner, James Anthony, Matt Lucero, Tina Morrill, Ellen Young, Hector Gonzales.

>> Matt Lucero, sir. Good afternoon, mayor, committee members. I'm following up on a presentation I gave at full city council just a week ago. So I won't be redundant here. What I'd like to mention is that the last couple of days, I'm just here spiking on behalf of myself I've been contacting well over a dozen South Bay organizations, cancer groups, AIDS groups, hospice organizations, community hospitals, every single one of these organizations, every single one said that with the right restrictions in place they would support this ordinance. So here perhaps after this meeting I'd like some direction on how I can memorialize that support and get that to you, I think it's very critical. I'm a would be dispensary owner, sir, I would welcome the regulation, restriction, the taxes, the cooperation with the police. We need to get this into the hands of our seriously ill residents as soon as we can. Thank you.

>> Mayor Reed: Put it in writing, send it to the City Manager is the best way you can do it, whatever you got.

>> I'll do it within a week, thank you.

>> Mayor Reed: James Sooner, James Anthony, Tina Morrill, Ellen Young, Hector Gonzales, and Evan McGrath.

>> Good afternoon, Mr. Mayor, honorable councilmembers. My name is James Anthony. I'm a former community prosecutor for the City of Oakland and the city attorney's office, I wrote the tax that ran in Oakland earlier this year, I also ran the Berkeley initiative campaign last year which structured their regulatory environment. My preference is always to work with the city council and staff to create workable regulations that fit the sensibility of individual community. Initiative process is also a possibility. Just briefly, the situation in Los Angeles has arisen out of a failure to regulate and I don't think that that's the situation that we're going to have here in San José. It seems like you've taken some very responsible first steps in controlling and regulating this activity, and I'm happy to work with staff, in planning or the city administrator's office the City Manager's office or the city attorney's office and I'll leave some contact information here, thank you.

>> Mayor Reed: Thank you. James Sooner, Tina Morrill, Ellen Young, Hector Gonzales, Evan McGrath.

>> Mayor, city council, my name is Ellen Young. I come here as a patient. I really appreciate you bringing this to the attention of the city. I wasn't much into pot when I was young although it was a big deal, but a couple of years ago I came down with breast cancer and I was totally totally traumatized to having to take the antinausea, I discovered marijuana it was such a relief. I have since discovered so many people that I know who use marijuana for medical purposes, it is amazing to me. Middle aged women, a woman who used it for polio she bought growing up in another country used it for 30 years, a woman who tried to get off her heavy duty pain medications for 20 years and finally decided to try marijuana, even though she was terrified her children would find out. A month later she was fine except she still had to use ibuprofen. I'm still impressed. I have just a quote from a Harvard medical school doctor who said if marijuana was a brand-new drug --

>> Mayor Reed: I'm sorry your time is up ma'am.

>> Okay, it would be hailed as a wonder drug. Thank you.

>> Mayor Reed: Give that to the City Manager City Clerk they'll get it to us. James Sooner, Tina Morrill, Hector Gonzales, Evan McGrath.

>> Good afternoon, Mr. Mayor, good afternoon, councilmembers. Thanks for taking this issue on. I think it's very important and I'm glad we're talking about it. As you may be aware I sent in a letter in support of Councilmember Oliverio's request for the city council to look at this issue.

>> Mayor Reed: I'm sorry didn't get your name.

>> Hector Gonzales.

>> Mayor Reed: Thank you.

>> And -- this is a little low but -- you know I'm not going to speak to the medical benefits, I think there's people in the crowd that can speak to that much better than I can but I think San José has a unique opportunity here, third largest city in the state over a million people there's an opportunity for San José to really become an example and a leader in how to properly regulate medical cannabis use in the city. And I agree with what has been said so far, both by city council and some of the people who have talked and I think that any time we can help to improve the quality of life of our citizens that alone should be at least a reason enough for us to discuss this so thank you.

>> Mayor Reed: James Sooner, Tina Morrill, Evan McGrath, Lauren Vasquez, Marnie Regan.

>> Hi, I'm Evan McGrath. Honorable Mayor Reed, Councilmembers Pyle, Chirco, Oliverio, and Constant, and City Manager Deb Figone. Good afternoon. I am here today regarding the medical use of cannabis in San José. This is already law. Many cities have passed the formal structures to allow medical cannabis. Medical cannabis is a budget reality, in its generating taxes and sales. But just as important as the financial aspects, please also consider the humanity side of this issue. Approving medical cannabis will bring relief to patients who are suffering debilitating illnesses. It will not only benefit the patient but their caregivers and families who suffer right along with the patient. Thank you.

>> Mayor Reed: Tina Morrill, Lauren Vasquez, Marnie Regan, Alexander Woon.

>> Hi, good afternoon, thank you for hearing me. My name is Tina Morrill. And I am here saying that I support having this consideration and thoughtfully looking at this issue. I think that any ways to creatively look at opportunities to bring in revenue for the city is extremely important. And I think it -- looking at ways to bring compassionate care to people who are sick is extremely important as well so I fully support this ordinance. Thank you.

>> Mayor Reed: Lauren Vasquez, Marnie Regan, Alexander Woon, Daniel Holland.

>> Hello. My name is Lauren Vasquez, I'm a resident of San José, a recent graduate of Santa Clara University School of Law and a qualified medical cannabis patient. As you've already heard it is not easy to be a medical cannabis patient here in San José. We suffer a lot, and for that reason, I recently started the Silicon Valley chapter of Americans for Safe Access, the nation's only group dedicated to protecting the right of patients and providers of medical marijuana. We started our chapter about a month ago. We've held two public meetings. We've already outgrown our meeting space. People contact me every day to join our organization and it is clear that the community supports and needs medical cannabis dispensaries here in San José. As stakeholders in this process I would like to offer our help and support to find answers to your questions and contribute to the process in developing an ordinance which responsibly regulates medical cannabis dispensaries. Thank you.

>> Mayor Reed: Marnie Regan, Alexander Woon, Daniel Haviland, Erica Taylor Montgomery.

>> My name is Marnie Regan and I've been a resident of San José, District 4, for 15 years. I'm also a medical cannabis patient. And I want to just speak briefly that to the point of someone brought up the point that anyone can grow it, you don't know if you need a permit. I want to mention there are many, many patients who are unable to grow it themselves produce it themselves for financial or physical reasons. For that reason we really need compassionate cooperative dispensaries in San José to provide those patients' needs. In addition to providing medical cannabis, these cooperatives, these dispensaries provide patient support, education, peer support, camaraderie, for many patients who are isolated in dealing with serious health issues. They are already stigmatized, many of us are stigmatized because of their cannabis use, going to these places, education and many adjunct services in addition to our medicine. And I think San José --

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

>> -- patients deserve local access, thank you.

>> Mayor Reed: Alexander Woon, Daniel Haviland, Erica Taylor Montgomery, Dave Hodges.

>> Good afternoon, mayor and city council members. My name is Alexander Woon, and I am the San José State University students for central drug policy chapter founder and president. I speak to you on behalf of students at San José State. I'd like to note that although many 18 to 24 year olds are seen in medical cannabis dispensaries healthy, many of them suffer from serious illnesses such as PTSD, bipolar disorder and severe anxiety. Throughout talking with many students, I noticed a lot of them are vets coming from the Middle East and many of them do suffer from PTSD. They should have local access to medical marijuana. It is also a fallacy to think of -- think that regulation of marijuana won't increase the availability to children. It is proven that teenagers can acquire marijuana much easier than alcohol and cigarettes, because it is a regulated market. This is because dealers don't check I.D. Thank you.

>> Mayor Reed: Daniel Haviland, Erica Taylor Montgomery, Dave Hodges.

>> Good afternoon, mayor and city council fellow citizens of San José, Daniel Hoveland, I live in District 7, I'm a business owner and taxpayer and I'm also a medical marijuana patient. I suffer from serious lack of appetite and nausea that I suffer from on a day-to-day basis. Consideration the welfare of our citizens and we need to set some guidelines and to have legal access and regulation for medical cannabis. Thank you.

>> Mayor Reed: Erica Taylor Montgomery, Dave Hodges, Sterling Leonard.

>> Good afternoon, Mr. Mayor, councilmembers other dignitaries. My name is Erica Taylor Montgomery, and I come before you today both as the official spokesperson for the San José cannabis buyers collective as well as a patient. This is a bag of over a dozen pills that I take every single day, prescribed to me by three different physicians including the Stanford pain clinic. I've been diagnosed with a severe case of fibromyalgia, as well as severe nerve damage due to two near-fatal accidents exactly a year apart, almost to the day. I'm in consistent pain every waking minute of every day. And yet, these dozen pills cannot do for me what this does for me, on a daily basis. And yet I'm made to feel like a criminal because there aren't any laws in the City of San José that regulate this type of medication for me. I'm forced to go to Oakland, to San Francisco or to Santa Cruz in order to get my medication. It's very difficult for me living in Santa Clara County to make those trips and I welcome your looking into this issue and hopefully passing laws that will help. Thank you very much.

>> Mayor Reed: Dave Hodges, Sterling Leonard, Ross Signorino.

>> My name is Dave Hodges, I'm going to shorten this a little bit because I know we're short for time. I'm the founder of San José's first medical cannabis collective, the San José cannabis buyers collective. We have been open for three and a half months. We now have over 1400 members. In the three and a half months that we've been around we've paid \$13,000 in sales tax and my accountants project 46,000 by the end of the year. As a non-- not for profit LLC we look forward to donating back into the community as much as possible. We're working with Americans for safe access, as well as the medical cannabis safety council. We also have the full support of Breta Bolger, by good friend and founder of PRX, Jeff Jones, the Patient I.D. center of Oakland, Bob Sillim, former head of the Santa Clara Health and Hospital System and the member of the SJCBC. I'm a firm believer in medical cannabis. In many cases it has no alternatives and has been proven a beneficial medication in a wide variety of cases.

>> Mayor Reed: Sorry, your time is up. If you want to submit that in writing it will get circulated to us. Sterling Leonard, Ross Signorino, Leland Dowden.

>> Good afternoon. I'm not a patient, but I know several individuals who find relief from debilitating illness only through prescribed marijuana. I'm a city resident and attorney but currently I'm a stay-at-home mom of two young children. I'm active in their schools and I'm very active in their play groups. As a parent I support dispensaries in San José and I believe that they send the right message to kids: That medicine, and by extension marijuana, is for sick people. Regulated dispensaries deglamorize marijuana use, and they help young people learn the difference between necessary medicine and drug abuse. I think the assets generated from taxing these businesses could also further benefit the public and the city, so I ask you to continue to consider these issues, thank you.

>> Mayor Reed: Ross Signorino, Leland Dowden, Roger Jackovitz.

>> Ross Signorino: Thank you, Mr. Mayor. You just solved the budget problem here in San José. You can cancel that meeting tomorrow. I agree with all the medical terms and benefits of marijuana, what Councilman Oliverio said. But also, another thing that people, when they're sick, and have HIV or whatever, their appetites are gone. And marijuana helps people with that, it helps to stimulate their appetite. Another caution I might add, since we might go to the area of cultivating marijuana in backyards and so on, you may have to be very careful in this regard, although I think you should be able to, in that you may have home invasions in this particular area where people are going to go in and want that marijuana, and I think you might have some problems there. So when you write the law whatever conditions you put to it, whatever you think the dangers are, then put stiff penalties on people that might do something like this in home invasion. Thank you.

>> Mayor Reed: Leland Dowden, Roger Jackovitz and then some guy wearing a Tommy Bahama shirt. You know who you are.

>> Thank you for allowing me to speak this afternoon. I was born with spina bifida occulta. For the last 15 years my doctor has been working with me on my arthritis. I have very few joints in my back that even have any cartilage in them. I am in perpetual pain. I have had a lot of muscle pain recently. This morning I got back from my doctor, he has diagnosed me with terminal muscle degeneration. The pain that I've had

for these months and many years is reduced and eliminated when I use this. And I'm begging you, to allow some these people to open up dispensaries in this town so that I don't have to drive to Oakland. And furthermore, let me say this: If anybody ever tells any of you that this doesn't help, look at them in the face and tell them they're lying. Thank you. [applause]

>> Mayor Reed: Roger Jackowitz.

>> Council, thank you for allowing me to speak. My name is Roger Jackowitz and I'm local San José resident. I'm a contractor, as a matter of fact I was the project manager who installed all the cubicles, 1800 stations in this building. That was many years ago and things have been very tight. I was one of the first medical marijuana patients issued a card out of Oakland many years ago. Basically, all I really want to do, you've heard the compassionate health stories. Mine is not as bad as those people. I was born with a terrible TMJ problem. I ground all my teeth out before I was 40. The pain is unbearable. Marijuana greatly reduces that. I would ask for priority for the council to implement priority for licensing these clinics, perhaps to give some sort of priority to local contractor or a local resident versus the big business and/or the conglomerates that may come in and try to turn this into an enterprise. A money making enterprise. I want to help people like myself, my door is open for all the checks and balances.

>> Mayor Reed: Sorry, your time is up. Chris Chen is our last speaker.

>> Thank you. Not very much, Mayor Reed. Most of you know me as the wine guy, so it's kind of a little strange that I'm here today. This is an issue that's very dear to my heart. As my mother dying of breast cancer in 1980, marijuana was something that helped her deal with a lot of issues and for her to have to get this drug illegally was horrible. She contacted Al Alquist, and I think is one of the first people to encourage the law that eventually surfaced as 215. The bottom line is if you have the right to have this drug and you don't have access to it, it's justice denied. You're without a remedy. So I know that you'll carefully consider this matter. I think this is a potentially big business, there are a lot of zoning issues, Public Safety issues and I know you'll do a great job in considering these things in coming up with an appropriate ones for the city. Thank you. [applause]

>> Mayor Reed: That concludes the public testimony on this item. We'll bring it back to the council committee here for discussion and some direction to staff.

>> Councilmember Pyle: Move to approve.

>> Councilmember Constant: I was going to make a motion but I think she beat me to it.

>> Councilmember Pyle: I did. You can second.

>> Councilmember Constant: I just want to clarify what the motion is.

>> Mayor Reed: Send it to the staff for a workload assessment.

>> Councilmember Pyle: Exactly what you said.

>> Mayor Reed: In a couple of weeks here with a preliminary so we know where we are and figure out how we can get this moved forward, not that you'll have done the workload assessment, but give you a chance to think about it and bring it back in two weeks.

>> Lee Price: Clarification from Rick?

>> Mayor Reed: Yeah, by that time we'll have clarity on legal issues and it will be a is function of sort of the zoning work, apparently and you'll have a chance to figure that out and bring it back on the 18th.

>> Councilmember Oliverio: Question for the Rules Committee. Do I sense, that the Rules Committee is inclined to let this conversation go to the full council?

>> Mayor Reed: It will go to the full council. It's just a question of when.

>> Councilmember Oliverio: Thank you.

>> Councilmember Constant: I didn't officially second but I'll second.

>> Mayor Reed: So we have a motion to refer this to the staff bring it back in two weeks as part of the workload assessment. Further discussion? All in favor? Opposed? None opposed, that's approved. Be [applause]

>> Mayor Reed: We'll move now to the Community and Economic Development agenda addition, which is a recommendation to return -- from Councilmember Liccardo and Pyle, Councilmember Pyle chairs this committee, to return to the CED Committee in November at the earliest opportunity to identify strategies and policy changes to reduce the burdens of city fees on nonprofits, neighborhood organizations, and other sponsors of events. Do we have a date now for that CED committee meeting?

>> Councilmember Pyle: I think it's the -- that wouldn't be right.

>> Mayor Reed: Well, it's either that November meeting or the December meeting because that would be the earliest possible opportunity after that.

>> City Manager Figone: Mayor, there's staff in the audience. Carey, do you know what meeting is being targeted?

>> Good afternoon, we would like to request if we could present to the committee at their December meeting, we are presenting a similar initiative to the arts commission at their November 12th meeting so we'd like to get the commission's input so the December meeting would be more ideal for us.

>> Mayor Reed: December meeting, okay. Well, I'd certainly support the motion. I just wanted to reflect on the fact that when I was fir on the council we had a finance committee that I served on and we dealt with this issue at some length so I'm hoping there's somebody who remembers that and we don't have to reinvent the wheel here and redo the work because there's a file somewhere, that I'm sure of. Councilmember Constant.

>> City Manager Figone: Carey, what is the date of the meeting?

>> The December committee meeting? I don't have that date. The arts commission is the 12th of November.

>> Councilmember Pyle: Right, the first December meeting is the 1st, is it not?

>> Mayor Reed: Council meets on the 1st.

>> Lee Price: Don't you meet like the third week of the month? We'll have to look that up. Nora, can you look that up real quick? What's the regular meeting date for CD?

>> Mayor Reed: Okay, we'll come back to that when we have the date on that. So Councilmember Constant.

>> Councilmember Constant: Yeah, I just wanted to make sure as we have this discussion, that we're also looking at the General Fund impact. And as part of what we're going to be talking about tomorrow, priority-setting, I just wanted to make sure it's in the context of what the opportunity costs are to the city if we were to go forward on this.

>> Councilmember Pyle: If I had to make a guess I would say that we're going to be able to have more events and that we can possibly turn this into something that would raise the revenues rather than decrease them.

>> Lee Price: Perfect.

>> Mayor Reed: All things are possible.

>> City Manager Figone: Mayor, can I add a comment please?

>> Mayor Reed: Opening day.

>> City Manager Figone: If I could -- because I'm often sensitive to council's potential concern that one item goes through and the other needs a workload assessment, let's just say I wanted to say on this one actually I received a request from I believe it was the downtown association a while back and had referred it to staff. So the work that we're actually advancing had gun a while back at the staff level and it's from our perspective it's not necessarily a new issue.

>> Mayor Reed: Certainly not a new issue. We have one request to speak on this, David Wall.

>> David Wall: Good afternoon. Normally, such things shouldn't even come before you. The office of cultural affairs is nothing but one of the most mismanaged groups within the city. Allowing them any type of flexibility with no funding for their events is irresponsible. It is also irresponsible for the office of cultural affairs to put forth this ridiculous proposition, in relation to the ongoing budget collapse of the city. They've had plenty of time to propose mechanisms to make affairs within the city easy, or events within the city easy, to put forward. They have waited for whatever reason, to this last possible date in the month of November or December, to put forth their requests. It should be discounted, and the office of cultural affairs should be completely eliminated from the budget, with certain savings to your own council staffs because therein lies great administrators who know your districts, know the events, and what they require, and they need funding to carry on that mission. Thank you.

>> Mayor Reed: That concludes the public testimony on this item. Do we have the date figured out as to when the CED committee will meet in December?

>> Not yet.

>> Councilmember Pyle: It's the third Monday in September -- December. 23rd, I believe it is.

>> Ed Shikada: The 21st would be the third Monday in December. I think it would normally be meeting in the 28th of December so I believe the special date was selected for the December meeting, we don't know which.

>> Mayor Reed: Probably December 21st but we'll get to that later. We have a motion to approve to refer that to the committee. All in favor, opposed, none opposed, that's approved.

>> City Manager Figone: Mr. Mayor, we could confirm that next month at your special Rules Committee meeting.

>> Mayor Reed: All right. Next item is item J-3B. Consideration of release of police records of an arrest made on September 3rd, 2009, commonly known as the Fung Ho case. I asked this be put on the agenda so we could discuss the status of where we are on that. I know there is an investigation pending and I want to get -- hear from the chief as to what the status of that is.

>> Rob Davis: Yes mayor Rob Davis Chief of Police. We know that the investigation is progressing as best as can be expected. If it has not already been taken over today, it will be taken over before the end of the week, in terms of the criminal investigation. So once that takes place of course the District Attorney will determine how much time they need over there to try and review the case and determine what they want to do in terms of reviewing it or filing charges or not and we would know at that point what their stance is. Our initial point is coming to a quick close I think and we're in the process of taking that over.

>> Mayor Reed: Okay. Thank you. Well, it's my hope that we'll have this on the Rules agenda shortly after the investigations are done, so that we can consider the request. I'm not -- I don't want to consider that while we still have investigations pending. But I'll let people speak to that and we do have some people that want to speak to it. Richard Conda and David Wall.

>> Mr. Mayor, members of the council, I'll just be very brief. I think we would like the same kind of records release in this case as have been released in the Daniel Pham case for a lot of the same reasons, because of the extreme community concern about this incident and about how it occurred and really understanding what happened without it being summarized or released in a way where the information is incomplete. Thank you very much.

>> Mayor Reed: David Wall.

>> David Wall: Objection is tendered for any more release of police records on any of these cases involving tapes. No one has presented any information that 911 tapes are sacrosanct. In other words, accurate. Not that they record the events accurately, but the sounds behind them can be staged. They're just a tape recording. Events, people's comments, tonation of voice, background noises can be staged. Releasing these tapes in their entirety can do nothing more than whip up undue hysteria. Considering these issues. Two, you just are focusing on the criminal aspects of litigation. The civil aspects taint juries for miles around, when you release these tapes. Tapes should not be released at all. Period. Vice Mayor Chirco was correct in a transcript by a certified shorthand reporter, as to what was said. This takes away any type of staging. Now, in this particular case, of late with video, technicians should be forced to look at this, was this a staged event? Because of the fact the City of San José is all too quick to settle litigations with these complainers. It is a better chance of becoming rich by filing a complaint against the San José police and having the settlement by the council, than actually buying a lotto ticket. So these tapes should be suppressed at every level information under your administration has flowed greater than any other administration cumulative throughout San José's history. That's not an issue. The other ones I've already talked about. Thank you.

>> Mayor Reed: That concludes the public testimony on this item. Committee discussion? What I'd like to do is have this brought back to us after the investigations are done, I presume the District Attorney will have an investigation and if not, then we can deal with it sooner and put it back on our agenda. Okay with the committee? All right, that's what we'll do.

>> Councilmember Chirco: You need a motion?

>> Mayor Reed: Yes, let's do that.

>> Councilmember Chirco: Move approval.

>> Second.

>> Mayor Reed: Motion, all in favor? Opposed, that's approved. Open forum, I think, is the last thing. We have nothing in council policy, we do have open forum, card from David Wall.

>> David Wall: This is good news for you. Take it easy. I think I mentioned this before on CED but I'll mention it again. Revenue generation for animal control. A lot of folks out there like our furry friends. If you were to put an overage box on the back of the envelope of garbage bills, slated for animal control, I guarantee you, you'll raise a ton of money. And if you were to direct the City Manager to direct finance to set up a restricted use or an enterprise fund for animal control purposes only, not to be subtracted from General Fund fund allocations but to set up a quasi-endowment until an endowment fund could be established, you could raise a lot of money. It's not going to cost you that much to tell the printers, to add another a little box. And who knows how many other boxes you could add on the back of that envelope

that would entice people to give more money, who would not have given money normally. I know I would give money directly, and it would be nice to see that. Thank you.

>> Mayor Reed: That concludes the open forum, concludes our meeting, we're adjourned.