

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

City of San José Rules and Open Government Committee meeting.

>> Mayor Reed: ...Meeting to order. This is Rules and Open Government Committee meeting for May 20th, 2009. First question is, any changes to the agenda order, we're going to take item 10.1 first, and then we'll deal with our council agendas. Any other agenda order issues? No. Okay. 10.1 is a request from Councilmember Chu to work on a council resolution regarding the BART project. I understand Councilmember Chu is not able to be here, but we're still going to move ahead with this, and we'd ask the staff to come back and talk to us about what we have done in the past in terms of the City of San Jose's positions on the work on the BART project. I'm pretty confident we are 100% in favor of the entire BART project, and but I wanted to have staff have a chance to verify that. We are joined today by VTA staff, Jim Lawson is here. So what I think I'd like to do then is just to ask the staff to give us an update on all of the things that we've done in the past with regard to the BART project that might form the basis for some sort of a resolution that we might want to do reaffirming our support to build the entire BART Project. So I'll turn it over to Hans.

>> Hans Larsen: Okay, thank you, Mr. Mayor. I'm Hans Larsen, deputy director with the Department of Transportation. And joining me on this item is Jim Lawson, from VTA and Leila Hadaya, also from the VTA, working 100% on development of the BART project. As raised last week at the Rules Committee, staff was asked to come back a verbal response to the recommendations in the memo from Councilmember Chu and to respond to questions raised by the mayor relating to what's the previous policy actions related to BART, the VTA's process in terms of decision making on potential phasing, as well as the status of various issues related to planned BART stations that were raised by Councilmember Chu. And I'll briefly go through each of those. In terms of a previous policy action, all the actions that have been taken by the city council have been in the context of looking at the entire BART project. The same goes for the VTA board, the context has always been, building the full BART extension to Silicon Valley, serving Milpitas, San José and Santa Clara. And that's also the same case with everything that's gone before the voters, in terms of the BART project, has always been in the context of the full BART project. In terms of the most recent city council actions related to BART, the last item taken by council was an action on December 16th, 2008, that reconfirmed the City's legislative policy priorities. And there's a specific line item in there that relates to BART to Silicon Valley that describes the full BART project, \$6.1 billion, and the city policy goal is to support efforts to seek full funding for the BART project. So there -- that's the most recent item on record and anything that we dealt with dating back to that as I mentioned has always been in the context of our goal of building the full project. The second issue relates to phasing. And the issue of potentially phasing the BART project first came up at a VTA board workshop that was held in February. And the context of that was, that with the decline in the local economy, and really the national economy, is that it was raised by VTA staff that there may be a need to consider a potential of phasing the BART project. And so this was really kind of an informal discussion between the board and staff in the context of that, the local economic conditions. What was made clear is that we're in such an uncertain time, it's not the time now to make a policy decision where we go and what the VTA general manager recommended is that we look at a two-year time frame. And for the BART project the first priority is to complete the federal environmental clearance which then opens up the project to gain federal funding through the new rail starts process. That work would take probably a year and a half or so from now to get through that. And in the context of the VTA's two-year budget two year from now would probably be the appropriate time to consider, okay, what do we do with the BART project at this point. So we would have the benefit of knowing how much federal money we have for the project, we'd have a better understanding of the local economic conditions, and the VTA's local sales tax moneys that support the project, and that would be the time in which we kind of call the question of where do we go with the BART project, build the full project or potentially phase it. There's nothing in the VTA's proposed two-year budget that looks at building any phase of the BART project in sort of the two-year time frame. So it's really not a question, you know, that's before the board at this time. Might add that sort of what was created, some maybe confusion over the issue, is the fact that the federal government has defined a segment of the BART project in which they believe is eligible for federal funding participation, and that federally funded segment is the portion from Warm Springs to Berryessa. So they have strict cost effectiveness criteria, and that's a piece of the project that has a relatively low cost, high

effectiveness that needs their requirements in terms of, this is a piece that they're eligible for funding. So that piece has been defined in the federal environmental document, as an alternative for the BART project, but it was put that way as a way to qualify a portion of the project for federal funding. And so there's environmental clearance covers that as well as the full project. We would recommend not taking any kind of policy position that indicates opposition to considering the project ending at Berryessa, as an initial phase, because that would work to undermine efforts to try to secure federal funding for the project. I think we continue to say we want the whole project done. But the issue of phasing is something that, from a practical perspective, I need to raise with more information, and as I mentioned, is probably not something we take on for at least a year and a half or two years. The last area related to some questions about the stations. These are raised in Councilmember Chu's memo. First there was a concern expressed about the quality of transfer between the BART station and the light rail. And the concept that was in the environmental document showed passengers transferring would need to cross a driveway or a local access road within the station. That issue's been raised to the VTA. They recognize the importance of that transfer, and they've prepared some alternative design drawings for that, which have been shared with Councilmember Chu, and our understanding is that there is a level of satisfaction that that issue getting addressed and resolved. The second station issue relates to Berryessa itself, that if it were to be an end of the line station, how do we manage that so that it doesn't create a significant parking or traffic issue at that location? There are two things that are assumed under that alternative. One is that there is a new 101 Mayberry interchange built and in place before BART opens. And that provides sort of the major source of access and circulation, it's not there today, but that would work in making that manageable. The second piece is to put in place a high frequency bus connection between the Berryessa station and Downtown San Jose, so that people who are taking the trip to Downtown San Jose would be able to have a quality transit service to be able to do that, so that it minimizes the amount of traffic that would occur at the Berryessa station. The third issue was a consideration of other alternatives for a possible interim end-of-the-line station and the option of a station at Alum Rock, closer to Downtown San Jose, has been raised. It was raised by BART policy advisory board member and Councilmember Liccardo to the VTA. They've agreed to study that as an option over the next three-year period, so that we have potentially another option to consider if it becomes necessary to look at phasing the BART project. So VTA has responded positively to that as a possibility. So that wraps up kind of a quick overview in response to the issues in Councilmember Chu's memo, and the questions that you, mayor, asked. I invite VTA to add any other comments and we'll take any other questions that you might have.

>> Jim Lawson: Thank you, Hans, Mayor Reed, members of the council. I thought it might be worthwhile to update you. Currently the general manager and board chair of VTA are back in Washington meeting with FTA representatives, as well as some members of our delegation. Our focus right now, at VTA is to secure federal funding for the BART project. It is the BART board's position that the entire project will be built. And in order to do that, we need to have a successful certification of the environmental impact statement that's currently be circulated. That environmental impact statement has three options. No build, which we're not going to do, we hope. BART to Berryessa, which we're also not planning to do, and the entire segment. As you know from your experience on the council we must have options available that are viable options in order for an environmental document to be certified. So I would echo my colleague, Mr. Larsen's comments that any city council position eliminating that option would not be helpful towards securing the federal funds. Securing the federal funds is important in two regards: The first is the amount of federal funding is necessary to complete the project in any event, that's some \$750 million we've originally asked for. We do intend to ask for more given the fact that there is a more congenial administration in Washington than in the past. It also triggers the recently passed measure B which provides the quarter-cent operating tax to operate the BART system. If we do not get the federal funding, it is virtually impossible for VTA, using measure A, given the current state of tax revenue, to operate and support the BART extension. So for those reasons we ask you to be very circumspect in considering any resolutions about how or where the BART project would be phased in its construction. Once we have the environmental impact statement certified, we'll apply for a record of decision from the federal government, and at that point it is that we will begin considering construction, construction phases, alternatives to station

designs, all of those need to follow, literally you can't put the cart before the horse. All of those need to follow a federal record of decision approving the BART project. So having that, I will also tell you that we had the FTA team assigned to the BART project at VTA last week. We have never had more cooperation from the federal government. We've never had a more positive response from them. We are very optimistic that we're on the right path at this point and look forward to the City of San José's continuing strong support of this project. I'd be happy to answer any questions.

>> Mayor Reed: Okay, I think we have a few questions. I had just a couple of clarifying ones. First, I believe I understood both Hans and Jim to say that it is the official position of the City of San José, we're building the entire project. It is also the official position of VTA, we're building the entire project. That is what we're trying to do. As far as I know, based on what you've said and I've never heard anything otherwise, being a VTA board member. There is no recommendation from Santa Clara Valley Transportation Authority to build BART only as far as the Berryessa area in San Jose, there is no recommendation on that.

>> Jim Lawson: That's correct.

>> Mayor Reed: The other question I had is, two years probably before the environmental impact statement is done, one year?

>> It gets completed -- it gets circulated in October of this year, and then we hope for a record of decision in January 2010 which would allow us to begin property acquisition.

>> Mayor Reed: So not until January 2010 would we be capable, as the VTA board, of beginning to make decisions about alternatives, preferred alternatives, or phasing or anything else.

>> Uh-huh.

>> Mayor Reed: And so I think it's a little bit early for us to weigh in on those issues. Because I have a lot of phasing questions.

>> Jim Lawson: Right.

>> Mayor Reed: And construction questions having to do with not just the Berryessa station, but the other stations, as well, and how do we do that, and what about the boxes, and how long they're going to be open. All those issues need to be discussed and dealt with at some point, but it's just premature to get into that until we have the environmental impact statement done, right? Okay. Other councilmembers, committee members, questions? Nancy.

>> Councilmember Pyle: Jim, is the money that Michael and whomever else you said was asking for, would that be in addition to any stimulus moneys that would be coming?

>> Jim Lawson: That would be -- the moneys that we're asking for from the new starts project is \$750 million. Any additional money over that would be stimulus money that we would start to look for.

>> Councilmember Pyle: So of the five --

>> Jim Lawson: Or any -- we're equal opportunity askers. We'll ask for any money.

>> Councilmember Pyle: Right, you never turn down money that you -- so of the \$5 billion that is the stimulus that is coming to California, is that all transportation money?

>> Jim Lawson: No. Well, it's transportation money but it's divided up into a variety of different buckets.

>> Councilmember Pyle: So do you have any idea how much money would come from that? It hasn't been --

>> Jim Lawson: Oh, gosh, I would -- there are people on our staff that know the answer to that, I'm sorry that I do not, and I'll get you that answer.

>> Councilmember Pyle: I will stain tuned, thank you.

>> Hans Larsen: I can address that. Most of the transportation funds, a lot of them have been allocated for San José. The big piece of money we have is for local pavement maintenance. The other pots that are available are discretionary at the federal level. One of the big pots is dedicated for high speed rail and so we're trying to get money for the California high speed rail project. The other pot that's out there is a \$1.5 billion funding pot, of which no state can get any more than \$300 million. And the kind of requirements, the guidelines for that funding source, will be coming out in June. And it's a variety of highway improvements, basically projects that are considered of national significance. But for California, \$300 million given the needs of the BART project may be getting a little bit of money but there's not big dollars there. The new rail starts program is the

opportunity for BART as well as the new federal transportation bill which is now just beginning to be authored or the things that we're looking at as the best opportunities for future BART funding.

>> Councilmember Pyle: So the president is looking for more connectivity between cities and throughout the United States, it's better for commerce and better for everybody, gets cars off the streets, et cetera. So that's the primary thinking behind some of these extra moneys that you're looking at?

>> We -- you know, we are looking to see what opportunities exist.

>> Councilmember Pyle: Yes.

>> This is a much more favorable climate than we've seen for the past few years. And with the reauthorization of the surface transportation act, we are hopeful that there may be some additional funding that we're able to secure. But that is -- that is wishful -- wishful thinking on our part.

>> Councilmember Pyle: Well, I'll keep my fingers crossed.

>> All right.

>> Mayor Reed: Anybody here who wants to speak on this item before we move on? Well, let me suggest a couple of things. First, with regard to the transfer connection between BART and light rail, seems to me that ought to be on our transportation and environment committee's work plan to just watch that, as part of the regular reporting. I think they already have regular BART related reports. But I think that's an item of particular interest to make sure we do have a good connection at the Milpitas-San José border there. And I think that can be a T&E committee thing. And then, given our previous position on BART, why don't we have you prepare a resolution reaffirming our support for building the entire project, like we did in December with the authorization on the lobbying piece, but in just a more formal statement of our continuing support. In light of the voters' approval and our previous actions, we're going to build the -- build the whole thing. I think that might be a -- when I was in Washington, I did meet with the FTA and their team and they do have a BART team already organized within the office, which is how they get rolling on real projects, so they view it as a real project. And they do view local political sport as being very important, not just coming from the VTA, you know, staff. There is local political support. So I think a resolution of support from the San José city council could be useful in one or more of those visits. And I don't think we need to send that to T&E committee because all of our previous actions, let's just get together a resolution and put it on the council agenda I think would be one way to do it. Councilmember Constant.

>> Councilmember Constant: Would you like a motion to that effect? I'll make it.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion to do that, discussion? All in favor? [ayes]

>> Mayor Reed: Opposed? None opposed, that's approved. Thank you very much. Now go to the city council agenda for May 26th, that's easy, no meeting, don't show up, folks. Holiday week. Memorial Day weekend. June 2nd, draft agenda. The agendas are starting to feel like June, just by weight. Lot of pages. Anything on page 1? Page 2 or 3? Page 4 or 5? Page 6 or 7? 2.17, actions related to the stationary plan for Diridon station. I'm pretty sure that's going to come off of the consent agenda, to talk about that, so might as well put it in the transportation section, given the interest in the Diridon station area. Page 8 or 9. 10 or 11? 12 or 13? 14 or 15? Item 4.5 is the San José code amendment on sign ordinance. Is that basically a replay on what we did on Stevens Creek but for capitol auto row?

>> City Attorney Doyle: Part of it, yeah. Part of it is to pretty much equalize Capitol Expressway with what we did yesterday on Stevens Creek. You may remember that we increased what staff's recommendation was. We're going to try to make it consistent with what council's adoption was. There's also an item on the urban mixed use sign zone, that deals with Santana Row and allowing signage on their new garage. So there's a couple of things that are in addition to.

>> Mayor Reed: Okay, but probably not a long discussion, since we've already been through it more or less. Okay, anything else on 14 or 15? 16 or 17? 5.6, neighborhood commission. Are we finally ready to go on that, we think? Okay. On 17, item 7.2, council input on policies related to single use carryout bags. I thought this was going back to the T&E committee.

>> City Attorney Doyle: There's a Brown Act issue with the T&E committee. It either needs to go to another committee or come to council.

>> Mayor Reed: Let's send it to the Community and Economic Development Committee, Councilmember Pyle.

>> Councilmember Pyle: Sounds good to me. That's where it started.

>> Mayor Reed: That's where it started?

>> Councilmember Pyle: Yes.

>> Mayor Reed: Let's send it back to the committee. I think it's going to need more work before it comes to council. Otherwise, we're going to -- in the month of June I'm reluctant to take on big items like that.

>> City Manager Figone: And just so we're clear, whatever your pleasure is, Mayor. This conversation will inform what the staff will bring back in order for council to deliberately and make a decision on. So it really is continuing to process all of the different ideas that have been surfaced.

>> Mayor Reed: Okay. Then let's drop it, send it to T&E. Not T&E, C&E, Community and Economic Development Committee, which Councilmember Pyle chairs. Page 18 or 19?

>> Excuse me, mayor, 8.1 will be distributed later on today.

>> Mayor Reed: That's the public intoxication task force reports and recommendations, okay. Anything else on 18 or 19? 20 or 21? We do have a parking authority agenda, that's just approval of minutes from June of '08. I have some requests for additions, commendation to California waste solutions for something, government finance officers association distinguished presentation award and then some excused absences for Vice Mayor Chirco, Councilmember Constant, Councilmember Herrera. Any other additions?

>> Councilmember Pyle: Mayor, I think --

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: On the consent calendar, 2.17, I believe that's been moved to number 6, although I don't -- oh, no, I guess not.

>> We will be.

>> Councilmember Pyle: You will be moving it? Okay, all right, thank you.

>> Councilmember Constant: Motion to approve as amended with adds.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion to approve as amended. Any issues in terms of time of hearings on these things? We have the public intoxication task force report set for the evening. Everything else? There's just a lot of everything else. We'll just plow through it I think in the afternoon. The motion is to approve as amended. All in favor? [ayes]

>> Mayor Reed: Opposed? None opposed.

>> Councilmember Constant: (inaudible) as well as a separate motion on that?

>> Mayor Reed: That includes the parking authority agenda. Just one item. Redevelopment agency, June 2nd draft, anything on page 1? 2 or 3?

>> Mr. Mayor, item 8.1, staff requests deferral to June 16, city and agency staff are work to come up with alternative solutions for office space for the staff that they're going to be relocated from the former MLK library.

>> Mayor Reed: Okay. 8.1 deferred to the 16th. Anything else on 2, 3, 4 or 5?

>> Councilmember Pyle: Move to approve as amended.

>> Mayor Reed: Okay, we have a motion to approve as amended.

>> Councilmember Constant: Second.

>> Mayor Reed: With no additional changes. Let me double-check, I have no further notes. All in favor, opposed, that's approved. Legislative update. State of California. What happened to election day? Don't answer that question.

>> Betsy Shotwell: Well, staff is here from environmental services department. Can we look at the recommendation with regards to AB 410 regarding recycled water, which would allocate funds from prop 84 moneys for developing regional salt management plans as required by the new state water resources control board. This legislation is pending, staff is here from ESD to answer any questions.

>> Mayor Reed: Any questions on AB 410? Nancy.

>> Councilmember Pyle: You know me, mayor. That's a lot of salt, I would imagine. And apparently it's a regional -- more regional than anything else. I just really don't know. Some areas are going to be more impacted than others, I would imagine.

>> Betsy Shotwell: Right.

>> Councilmember Pyle: So I just wanted to get a sense of -- I'm trying to make some economic development out of all that salt. What do you think?

>> Eric Rosenblum, environmental services. The intent of this bill is really as a means of ensuring that any attempt to identify salt contributions from recycled water would not be looked at in isolation, but in the context of a whole regional, all the inputs, fertilizers, other sources of water, storm water, et cetera as a means of sort of leveling the playing field for consideration of salt controls. So the real purpose is to encourage the agencies to look at their salt issues on a regional basis rather than in isolation, and while the policy directed the regional boards to implement these programs regionally, there was no money associated with it. AB 410 attempts to readdress that by providing a source of funding.

>> Councilmember Pyle: Will that be impacted at all by what happened yesterday?

>> I'm sorry?

>> Councilmember Pyle: Will that be impacted at all by what happened yesterday?

>> I will leave that to others.

>> Betsy Shotwell: I'm afraid so. All funds pending that are in the passed -- propositions that passed, whether it be for housing, transportation, parks, water, again, we will probably, undoubtedly, see the same thing happen that happened in December. The Pool Money Investment Board did meet today, and they have determined that they will be holding funds and disbursing them based with the jobs development, economic stimulus equation very much key to the disbursement of these funds. I'm not sure where this would fit.

>> I might add, the source of these funds are prop 84, which do have their own source independent of the other issues that went on. However, history proves that those funds were stopped previously, and of course that would have to (inaudible).

>> Councilmember Pyle: Let's hope that cooler heads prevail. It's a very, very good bill.

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

>> Councilmember Constant: So moved.

>> Councilmember Pyle: Second.

>> Betsy Shotwell: One we turn around.

>> Lee Price: I mean two week turn around, it needs to go on the June 2nd.

>> Betsy Shotwell: I forgot. Thanks.

>> Mayor Reed: All in favor, opposed, number opposed, that's approved. Sacramento update.

>> Betsy Shotwell: Thank you, Mr. Chair. Pardon, Betsy Shotwell, Director of Intergovernmental Relations. I forgot to identify myself. I had hoped our lobbyist, Roxann Miller in Sacramento, could join us. However, of course, obviously, following yesterday's results a number of meetings were called spontaneously today that she obviously needed to attend that were quite critical. I did distribute the info memo I put out yesterday with Roxann, basically discussing some of the elements of the governor's May revise of the budget he submitted last Thursday. There were two pieces of it. One was sort of the first tier, if the measures had passed and then the second tier if the measures lose. Because we went from a -- ace know you know, a \$15.4 billion deficit to what is estimated to be much higher now. And you know, nearing 21-plus billion dollars. So with that, there is in the tier 2, much dependency on borrowing, borrowing 6 billion as well as the proposal to borrow almost 2 billion from local government. Again this is the governor's proposal. And down at the very bottom the current estimate that I've been working with the budget office on and others in Sacramento is up to 19.6 million, if 8% of property tax across the board is borrowed. That said, the leadership in the senate and the assembly, democratic leadership held a press conference this morning. They discussed the focus that they will take, obviously they indicated they will not be proposing tax increases off the bat. They will be looking at cuts and sayings, reorganizations, consolidations which were a lot in the governor's proposal last week. They say that they will be taking up this proposal very quickly with the cash flow issues that the State has, that they're hoping to have this phase of the budget discussions resolved by July 1, in order so that the loans contain to Wall Street. They -- again, they emphasized urgent action, and they acknowledge the vote and the direction of the voters yesterday, clearly borrowing will be on the table, and it will be critical. We will be working obviously with stakeholders. There's meetings, two coalition meetings this afternoon Roxann was attending, with labor, public safety, the league, of course, working on our message, and the opposition message, as well, coordinating obviously with other mayors in

the state. And in pointing out the issues of -- and problems related from borrowing, they have to pay local government back within three years including interest. This number has yet to have been disclosed. It will be in legislation, I imagine, at some point. And dealing with our own issues and our own world and our own budget impacts and what we're doing to resolve our budget impacts would be critical. We were doing this drill last July, we've done it before and will continue to do so, and bring you updates as often as we learn, and how we can deal with this proposal. But again, it is a proposal and we will work with it and then at the same time, we're working with the budget office as to obviously the impacts of this. I'd be happy to answer any questions.

>> Mayor Reed: Okay, Nancy.

>> Councilmember Pyle: My first question is, what were the percentage of the voters yesterday? I couldn't find it anywhere, in the San Francisco Chronicle or the Merc.

>> Councilmember Constant: In our county, it was about 25%.

>> Mayor Reed: I think statewide it was 22%.

>> Councilmember Pyle: That's pretty low.

>> Betsy Shotwell: Very low.

>> Councilmember Pyle: Yes. Well, I'm just hopeful that the legislators in Sacramento get it, that the taxpayers out there are either -- just don't care anymore, just don't talk to us anymore, they've lost faith. And/or they're really angry. And I don't know if there's been any determination yet as to whether that is the case or not.

>> Betsy Shotwell: I think we'll be reading a lot more into this, and following yesterday's vote there will be, and there are already, of course, discussions as to what might go to the ballot next year statewide, the two-thirds requirement to pass the state budget. The Bay Area Council today said that if the legislature doesn't put measures on the November ballot next year to call a constitutional convention, they will get the signatures to do so. So we will see every proposal, every reaction under the sun, probably next week and beyond especially as these cuts start to become reality.

>> Councilmember Pyle: Thank you.

>> Mayor Reed: Thank you. Well, the governor held the line for a year on borrowing from local government. But with the bad news on election day, he's said he's now willing to consider it. So I'm sure we're going to see something coming out of this process. My primary concern right now is cash flow and fiscal failure like we had really only three months ago, when the state had no money, no borrowing, and no projects. And while we only had several dozen projects held up here, it could get worse. And mostly those were affordable housing projects. So we have to look at what happens, if the state runs out of money and the PMIB decides to stop issuing funds for projects. It is one of the things we'll have to worry about short of actually getting a budget, which may even take our money. One other thing to add. I was in Sacramento Monday testifying at the senate appropriations committee on a bill being -- we're sponsoring being carried by Senator Alquist to expand the scope of the California Alternative Energy and Transportation Financing Authority to allow the same kind of transaction that the governor used with Tesla Motors to be used for alternative energy companies. While I think there's a lot of support for the concept, get out of policy committee on a 10-0 vote on appropriations, they only care about money. And so it's clearly -- it's a sales tax issue but it also could generate lots of revenues for companies that would otherwise leave the state, would generate property taxes, would generate income taxes, et cetera. But I think anything that deals with money is going to be stalled in the state legislature while they try to keep with the budget. So this particular bill was put on suspense and we'll work with Roxann Miller and our people in Sacramento to move it ahead. But a lot of things will stall while they go back to focusing 100% of their time on the budget. I don't know what that means for any of our other bills but it's not going to be helpful for moving anything that has any kind of a dollar amount associated with it. Nancy.

>> Councilmember Pyle: Technically, we don't have a budget right now, do we?

>> Betsy Shotwell: Well, we actually do have an '09-10 budget that was passed in February. And Roxann wants to emphasize that. And so what we're dealing with is the May revise with the recalculations based on what did not come in April 15th, as example, so we're dealing with that adjustment. So and that's why -- to the mayor's point, that's why this goal of getting it done by July 1 is so critical for the cash flow. Other times we've had income coming in at the beginning of

the year. We don't have that income normally even in a good year in July, August, September. So that's the critical piece here.

>> Councilmember Pyle: So they're really going to be battling with two budgets at the same time.

>> Betsy Shotwell: To some degree, absolutely.

>> Councilmember Pyle: Finish out this year.

>> Betsy Shotwell: Exactly.

>> Councilmember Pyle: And then start with next year's immediately. Yeah, that's a toughy.

>> Mayor Reed: Anything else? Thank you. No federal update?

>> Betsy Shotwell: No.

>> Mayor Reed: Any schedules, nothing to talk about? Anything in the public record the committee wants to pull for discussion?

>> Councilmember Pyle: I --

>> Mayor Reed: I have one, there's a letter from VAC Norcal regarding the death of Daniel Pham. I know the chief may have a response. But I think it would be appropriate for me to reply to the letter, send to the mayor. So I think I should reply, coordinating with the chief and the manager for that. But give them a response. So I'll take responsibility for doing that.

>> City Manager Figone: Mayor, if I could just comment, the chief did call me before Rules and yes, he is planning on a response and I don't know if his staff member is here. If you'd like any comment from the police department, otherwise we're happy to coordinate with you.

>> Mayor Reed: Why don't we, as long as you're here, do you have anything to add to that, the chief's just going to respond?

>> No, he's given me the county protocol that we can pretty much -- a lot of the questions we can't answer (inaudible).

>> Mayor Reed: Okay. I will respond and then I'll coordinate with the chief and the manager on that one. Anything else in the public record?

>> Councilmember Pyle: Yes, mayor, I'd like to pull number B from the letters. The letter from David Wall regarding two nurseries. I just wanted a point of clarification. What I heard yesterday is that -- is there some exemption for nurseries, for people that are producing plants?

>> John Stufflebean: John Stufflebean, director of environmental services. Nurseries are not considered landscaping. So the landscaping provisions would not apply to a nursery. We encourage nurseries to conserve water like everyone else and to also offer plants don't use a lot of water but they would be exempt from the landscaping requirements.

>> Councilmember Pyle: And 15% of -- Mr. Wall --

>> John Stufflebean: They will get their letter saying their water use compared to the previous year but again, we're not enforcing that. We're simply informing them of that.

>> Councilmember Pyle: This year it's request only.

>> John Stufflebean: Thank you.

>> Councilmember Pyle: I didn't know if Mr. Wall --

>> Mayor Reed: Mr. Wall, you want to speak on this item?

>> I think it would be prudent to just bring into the discussion about this. But the way that ordinance tentatively was posted and the language contained therein deals with the 40% of the water conservation aspect to that ordinance, where it says any -- something to the effect of watering any vegetative manner. That will destroy nurseries, as it is written, it will destroy landscaping companies and their investments into nurseries. It will destroy any type of real estate values and other cascading effects to the economy that the time period here today before you is too limited to analyze fully.

>> Councilmember Pyle: Well, they'll have a year to see what 15% will do.

>> Well, there's a lot of compounding factors which we earlier talked about on the salt issue and all. And I don't want to take up time or be out of order. But these are not just linear functions. These are getting into the region of geometric or exponential, as far as their compounding to the economy and the environment. This is a very touchy situation as you very well know. And I don't want to discuss it further without causing any confusion or false alarms or any of that. But this is very serious how this is worded. And I'll leave it at that. Permission to sit down?

>> Mayor Reed: Please. Any other items from the public record for comment?

>> Councilmember Pyle: Move to note and file.

>> Councilmember Constant: Second.

>> Mayor Reed: Motion is to note and file. All in favor? [ayes]

>> Mayor Reed: Opposed, none opposed, that's approved. Next we have appointments to boards, commissions and committees. We have four different commission appointments. First is the recommendation from Vice Mayor Chirco to appoint Veronica Ajawara to Early Care and Education Commission. Actually we have more than four commissions, four memos. Also from Vice Mayor Chirco, appoint Tania Nunez and Robert Abatecola to the Historic Landmarks Commission. Councilmember Liccardo's recommending reappointment of Bobby Yount, Patricia McDonald and Richard Holden to the Arts Commission. Councilmember Chu is recommending the appointment of Keith Graham and Andres Quintero to the Airport Commission, Clarence Madrelejos and Dallas Ratcliff to the Human Rights Commission -- yes.

>> Lee Price: If I could. We would like to recommend the deferral of the appointments from Councilmember Chu's office for the Human Rights Commission and the Mobile Home Advisory Commission. We still have a little more work to do with these two. If we could bring those back next week, we'd appreciate that.

>> Mayor Reed: Okay. Then we have commission appointments from Councilmember Oliverio to appoint David Hook and Tina Morrill to the library commission.

>> Councilmember Constant: I'll make the motion for all except 9.2 and 9.3, which will be deferred.

>> Councilmember Pyle: Second.

>> Mayor Reed: Okay, motion is to approve all of them, with the exception of the Human Rights Commission, and the mobile home advisory commission, which you'll bring back as soon as you're finished the work that needs to be done. Discussion on those? All in favor? [ayes]

>> Mayor Reed: Opposed, none opposed, those are approved. 10.2, resolution to waive park cancellation fees for the season. Councilmember Liccardo brought this in. He's here, I assume he'd like to talk about it.

>> Councilmember Liccardo: Thank you, mayor. I know this is certainly not a time when we easily raise issues about reducing revenue. But I think the circumstances are fairly well-known to everyone. We've got several festivals and events which are facing severe cost constraints and most recently of course we know about the America festival. Obviously a lot of factors playing into their decision not to go forward but one of which was the fact that I understand the city contribution in fact won't be as high as it was last year, either. Their decision to cancel the event on July 4th, in fact, saved \$25,000 to the city. As a result of forgone grant that they would have received, if my understanding is correct and Kim can correct me I think on the details. Nonetheless, Albert Balagso doesn't have the discretion to be able to say that he's willing to waive a \$5,000 cancellation fee. And it seems to me that we're really kicking folks when they're down by imposing these fees. And I'd like to be able to have an ordinance in place that would give us the discretion at least this year, in the year of considerable economic strain, to be able to allow some of these organizations to be able to back out without additional cost.

>> Mayor Reed: Motions?

>> Councilmember Pyle: Feelings of the council?

>> Mayor Reed: What do we need? The request is to direct the City Manager to draft a resolution. Do we need a resolution, or is this just a budget --

>> City Attorney Doyle: The municipal court requires an ordinance. Councilmember Liccardo mentioned that we could come back with an ordinance. We can do that at the same time we come back -- in the same time frame. So whether the council wants to add it on the 2nd or the 9th -- whether the committee wants to add it on the 2nd or the 9th, it's your call.

>> Mayor Reed: Are there any issues in terms of getting this done before any particular date?

>> Councilmember Liccardo: I don't think so, unless --

>> Mayor Reed: As long as we get it done in June, it's okay.

>> Councilmember Constant: I had one question.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: It's not clear, is this a temporary thing or just a blanket,, a tool?

>> Councilmember Liccardo: That is my intent, it would be temporary, for -- perhaps for the calendar year of 2009. You know, I don't see any need unless obviously the economy continues to get worse, for us to revisit this.

>> Councilmember Constant: So maybe we could do that. And if we need to, just renew it.

>> Councilmember Liccardo: Okay.

>> Councilmember Constant: For a period of time if it's necessary.

>> City Attorney Doyle: Right, we can put a time certain on the ordinance to sunset, and if necessary we'll revisit it. And I'm reminded if we do it on the 2nd, I need to have that thing drafted by -- in two days.

>> Mayor Reed: You got about 15 more minutes before this meeting is over.

>> City Attorney Doyle: My staff shouldn't have said -- middle of June would be fine. [Laughter]

>> Councilmember Constant: So I'll make the motion with the modifications we discussed.

>> Councilmember Liccardo: Thank you.

>> Councilmember Pyle: And second. I just had one question.

>> Mayor Reed: Question.

>> Councilmember Pyle: Does this leave any costs that we would have as a result of the cancellation?

>> Albert Balagso: As we draft the ordinance, we should take some consideration if there were any costs incurred to the city beyond the fee. So we'll coordinate with the attorney's office on that.

>> Councilmember Pyle: Okay, great, thank you. It can't have been that much, I wouldn't think.

>> Albert Balagso: Well, they're giving us enough advance where I don't believe there has been any significant costs, aside from the filing fees. With that, I think we're okay with that.

>> Mayor Reed: I would suggest that we set it for either the 16th or the 23rd, just as long as we meet the sunshine requirements and have enough time to do that, because it doesn't seem to be time sensitive. Anything else on that? Do you have a motion to approve? All in favor? [ayes]

>> Mayor Reed: Opposed? None opposed, that's approved. We have no council committee agenda items, and no open government initiative items, could we get a report from the City Attorney on the public records act requests that's in litigation over the financial records?

>> City Attorney Doyle: Papers were filed today, our opposition papers were filed at noon today per the court's requirement. There is a hearing set for Friday. And so we'll let the council know.

>> Mayor Reed: Okay, and that's over the -- whether or not we can release financial records.

>> City Attorney Doyle: The issue is whether or not financial records should be released, that are part of an application process for obtaining a loan from the city.

>> Mayor Reed: And just so the viewers at home and especially those in the Mercury News office know, we're actually proposing to release these records, having applied the balancing test and decided that they should be released. And it's up to the other person to be the moving party on that issue. So we're just responding.

>> City Attorney Doyle: The developer that the records are the developer's and we've given them the opportunity to prevent us from releasing them if the court agrees.

>> Mayor Reed: Okay. Anything else? Public comment? Open forum. Mr. Wall.

>> Two slight issues. One, I respectfully request that you transfer all meetings for the treatment plant advisory committee to this room for safety reasons. The current room is just too problematic, and it's unsafe for the amount of people that show up to that room, period. The door swings open. If it were to jam in an earthquake or for any other reason, extraneous amounts of environmental services staff. This is a better room. But please transfer all necessary funding, madam City Manager, to the office of the City Clerk, so the office of the City Clerk can maintain those meetings. And she'll need the staff, and it's justifiable under the plant operating funds that she have access to that funding. This is a more coordinated aspect to all meetings throughout the department should be run through the office of the City Clerk for a variety of sunshine issues and just for operational integrity. The other one deals with the sadness with one of your contemporaries, Councilmember Herrera. Please convey my thoughts and pray for her in her best of times. And also, it's a pleasure to see you, Judy, we'll continue to pray for your fast recovery. I guess my two minutes are up. Thank you very much.

>> Mayor Reed: Thank you, that concludes our meeting.