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>> --[AUDIO DIFFICULTIES--] ...items, depending on the time, the staff for SRBR needs to be out of here by 3:00. Perhaps you can change the order if necessary.

>> Mayor Reed: Okay, I think we can do that. Start with the October 26th meeting agenda. Any changes to page 1? Changes to page 2 or 3? 4 or 5? 6 or 7? One comment on the sequence, item 5.3, to be heard in the evening. That's the neighborhoods commission annual report. I would anticipate taking that first in the evening after the ceremonials. That's on the afternoon agenda, that works well with the others in the evening. Anything else on 6 or 7? Page 8 or 9? Land use items and hearings. 6 on the annexation issues, I think it would be better if we took the item 11.4, the initiation of annexation, before 11.3, which is rezoning, in the sequence of the hearing that would be better. And then we should decide if we're going to have this appeal of the conditional use permit matter before or after we do the annexation, because I think the annexation will take the longest time. Does staff know whether or not this appeal is going to generate a lot of public participation?

>> I haven't heard that there is going to be a lot of public participation on this item.

>> Mayor Reed: Then I think we would take this first with the other land use items and then get into the annexation issue. I guess it wouldn't be first, it would be one two three -- third or fourth. Also, there's an item later in the agenda that I've asked to consider adding to the 26th agenda regarding the supplemental retirement benefits. When we get to that we may need to amend this to do something. We have other requests for changes, we got a commendation for the D-5 neighborhood action coalition. A commendation to business leaders for District 5 business community. Commendation to Dr. Martin Luther King Jr. association with a request that that be heard in the evening. Any other requests for changes or additions?

>> Lee Price: Mr. Mayor, Sarah is bringing some speaker cards on this agenda.

>> Mayor Reed: Anything else in the way of changes? Okay, we'll take some public testimony on this agenda, then. Jeff harmer, Lisa harmer, Tom Davis. Come on down.

>> Good afternoon, my name is Lisa Harmer. I'm the treasurer of the Campbell village neighborhood association, better known as Cambrian Park 36. I'm speaking today because I object to the annexation of parcel 36 by the City of San José. We received public notice for the October 26th, 2010 public hearing to prezone and initiate the annexation of our neighborhood into the City of San José. The notice states that the annexation is in accordance with government code section 56375.3, which waives protest proceedings for the annexation of urban islands and pockets. However, Cambrian 36 does not comply with all of the required provisions within this code. We receive no services from San José, nor will we benefit from the annexation into San José. In fact, our current level of services will decline as a result of annexation to San José. For example, the September 26th, 2010 San José staff report provides four options for fire and EMS services to our neighborhood. Yet each one of these options will result in a reduction to our current service level. As such the San José annexation process must be deferred until San José complies with the government code. Furthermore, we question the appropriateness of Cambrian 36's inclusion in San José's urban service area and sphere of influence which was drawn up over 38 years ago, and to our understanding, has not been reviewed since that time. Accordingly we request that Lafco conduct a service review of San José pursuant to government section 54630. Please defer putting this on the council meeting agenda until proper procedure that is in compliance with the government code is implemented and the urban service area is reviewed. Thank you.

>> Mayor Reed: Jeff Harmer and then Tom Davis. Or vice versa, up to you.

>> Thank you, greetings. My name is Tom Davis, I'm vice president of the Campbell Village Neighborhood Association, also know as Cambrian 36. We fear that a great mistake is about to happen, specifically the City of San José is about to force-annex us into the city. The criteria for this was last reviewed in 1972. In 1972, Nixon was in the White House, if you told someone that you were in Silicon Valley, and all the fire stations had paramedics, no one would have had any idea what you are talking about. Our association president Mike Chrisman recently sent you a letter outlining why this should not be done. If there is one thing that stands out in the mindlessness of all of this, it is this. Once we are annexed to San José, San José will sign a contract for the very fire station that serves us now, and will continue to serve us, because San José station is twice as far away. San José had a fire station in our neighborhood that they closed in 1977. However, you go back to the way

things will work if we're annexed. The first call will go to San José dispatch who will then contact county dispatch who will then contact the station that is our home station now right in our neighborhood. This increases it by one chance that we'll have more foulups. All cell phone calls now and in the future are picked up by Campbell, because we are so close to downtown Campbell. Now, if there's a cell phone call, and this will increase as time goes on, there's a cell phone call for 911 service in our neighborhood, it's first picked up by Campbell, who will then get ahold of San José dispatch, who will then get back ahold of the Campbell station, so they can dispatch the rig to our neighborhood. The word "convoluted" was invented just to describe situations like this. I could go through every city service and correctly explain that our neighborhood is better served by Campbell. We're like orphans who are good to be adopted by the wrong family. We have no one to plead our case but us, we don't believe --

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

>> While we would like you to follow the golden rule --

>> Mayor Reed: Our next speaker is Jeff Harmer. This will be on the council agenda on Tuesday night.

>> My name is Jeff Harmer. I'm a member of the Cambrian village neighborhood association. I'd like to put a face on the agenda item, which speaks to a -- having to have a majority vote, because of the quantity of petitions that have been submitted. We've already gotten a concession that over 51% of the 333 parcels have been notarized, petitions covering them. Actually, by this afternoon that figure will be 67%. This speaks to there being approximately 222 parcels out of 333. 90% of those, if co-owned, the remaining 10% would have sole owners. If you do the math this comes out to 420 adults who left their sofas to be notarized. These 420 adults represent likely voters and who have already demonstrated their ability to leave their sofa and get involved in the community and we think that your council should take a hard look at an issue that 420 adults have endorsed. Thank you.

>> Mayor Reed: That concludes the public testimony on this agenda. Need a motion on the agenda.

>> Councilmember Chirco: Move approval.

>> Mayor Reed: Motion to approve agenda as amended. All in favor? Opposed? None opposed, that's approved. We'll see you all Tuesday night I'm sure. We'll turn now to the November 2nd council meeting agenda. Anything on page 1. Page 2 or 3. Page 4 or 5. I have a note on item 3.2, discussion action on a proposed moratorium regarding marijuana activities that could be allowed under prop 19. There is a sunshine waiver.

>> We need the 14 day sunshine waiver on this item.

>> Mayor Reed: Will it meet the ten days?

>> Yes.

>> Mayor Reed: Anything else on page 4 or 5? Page 6 or 7.

>> Excuse me mayor, on page 7, item 9.1, amendments in the General Fund for 2010-2011 rebalancing actions related to the Redevelopment Agency item needs also a 14 day sunshine waiver.

>> Mayor Reed: That will meet the ten day rule?

>> Yes. I'm sorry, did I say 9.1? 9.2.

>> Mayor Reed: Anything else on page 6, 7, 8? I have some requests for additions, excused absence for Councilmember Constant, national league of cities conference and Councilmember Constant's travel to the national league of cities conference in Denver. Any other changes or additions?

>> Move approval.

>> Second.

>> Mayor Reed: Motion is to approve with waivers as noted. All in favor? Opposed? None opposed, that's approved. Redevelopment agency redevelopment agenda for October 26th would be our next item. Anything on page 2 page 1 or 2 or 3? There's only three pages. I think we have a couple of things, we got some notes about waivers on a couple of things.

>> Mr. Mayor, members of the committee, Gary Miskimon with the Redevelopment Agency. The staff reports for item 8.2, the budget action and 8.3, the letters of credit agreement action with J.P. Morgan Chase bank neither report has been distributed yet and we are requesting a ten day sunshine waiver for the 8.2, the budget item and a 14 day sunshine waiver due to the financial level of the letter of credit agreement, the sunshine waiver for that item and actually we are also changing the language on 8.3 which I know you're coming to next. But I want to make sure we mentioned the waiver requirements. The 8.3 sunshine waiver is because we have a mandatory tender on the bonds and the trustee has to be notified by October 27th that this extension that we're working on will in fact be in place. Therefore, this staff report is late because we are continuing negotiations with the bank and that's the reason for our waiver request.

>> Mayor Reed: And if they -- we can't come to a resolution within -- between now and then?

>> Mr. Mayor, Rules Committee, Janet Kern from Redevelopment Agency. We believe we are getting some language with the bank at this point in time. But if we could not come to a resolution then we would have to tender the bonds, and the notice would have to go out on October 27th.

>> Mayor Reed: Okay. So high hopes for getting it done in time for this meeting. That's good. 8.2, the agency 2010-2011 capital budgets, I don't understand a need for a waiver on that. If executive director put out his proposed budget a month ago. My budget message has been out for a week. I don't know what there is to waive.

>> I know there's a shortage of staff. I hate to say it that way, but some of the people that were working on this are no longer on agency staff. But you are correct, that budget, the proposed budget has been online for I think about a month now. We've had a public hearing and a study session. So the information underlying that action has been available to the public for quite some time. You're correct this is a relatively short report and as soon as we get it finalized, which is at that point right now, we should be able to get it signed and out, but we did not make the 10-day requirement of distributing it last Friday.

>> Mayor Reed: But I think it would be a supplemental --

>> City Attorney Doyle: I think it is a supplemental memo. The main item has been out on the street for a while, as supplemented by the Mayor's Budget Message and your memo.

>> Okay, in that case we would not need the waiver.

>> Mayor Reed: I don't think it needs a waiver because it is supplemental information.

>> Thank you.

>> Mayor Reed: Any event we're going to have the hearing on the 26th. With whatever waiver is required. We need to do it. Then we have a request to change the language regarding the second amendment reimbursement agreement with J.P. Morgan Chase bank, adding things like the \$5 million liquidity reserve that they've asked for. So that language I'm not going to read, because it is a whole page of language.

>> We will have that in the amended agenda going out Friday and that amended agenda will be posted online for the public review there, as well.

>> Mayor Reed: All right, any other changes?

>> We have no other changes.

>> Councilmember Chirco: I would move approval with the waiver for 8.3 as noticed.

>> Mayor Reed: Motion is to approve as amended and waived, all in favor, opposed, none opposed, that's approved. Agency budget for November 2nd, anything on page 1? Page 2 or 3? I have no written requests for changes.

>> Councilmember Chirco: Move approval.

>> That's correct. There are no changes this week for this.

>> Mayor Reed: Motion is to approve, all in favor, opposed, none opposed, that's approved. Anything else we need to do on those agendas, besides take up the item H-2? I think what we'll do next, which is the recommendation in my memo to agendize the discussion action to amend the municipal code, to temporarily suspend bonus payments from retirement plan supplemental retiree benefit reserve, which would, if the committee agrees, put it on October 26th meeting agenda. Let me just get my notes here. The reason I asked this to be put on the agenda is, I understand that our retirement plans will be considering at the board level in November the possible distribution of additional funds under the SRBR program which is something supplemental retirement benefit, I can't exactly remember what the last letter stands for. And I'm concerned that we have an ordinance in place that would allow that or maybe even require that, even though the police and fire plan is not fully funded, market value's about 66% of full funding, actuarial value is about 84% of full funding, Federated market values, 54%, actuarial value 71% and we have unfunded liabilities in the billions of dollars. So I thought the council ought to have a chance to discuss that before the boards make the decision to spend the money, distribute the money. Pensions are obviously a topic of discussion. We have a stakeholders group looking at what we might do on pensions in the future. Council needs to negotiate with 11 unions on pension benefits. But this represents probably a couple of million dollars worth of distributions, and before the end of the year, and maybe another \$7 million or so for next year. They're targeted up. So I wanted to get this in front of the council so the

council has a chance to decide whether or not to proceed. And I know there's some questions about what we can do, how quickly we can do it, and so I'm put it on here for the Rules Committee to talk about have city staff a chance to help us consider what our options are at this date. Alex Gurza is here. Alex can you talk about what's going on at the board level and then the City Attorney will lay out what our options are.

>> Alex Gurza: Good afternoon, Alex Gurza, director of employee relations. Mayor, you summarized the program correctly. It is supplemental retiree benefit reserve, so it's an amount of money completely separate from the pension benefits, that in certain years the board would distribute funds out of those two retirees. It's commonly referred to as a 13th check program. So it's not suspending it Mayor Reed as you put in your memo would not affect the regular payments that retirees are counting on. So I think the issue that you're bringing before the Rules Committee is given the status of the funding of the plans to not make that payment this year, while we continue to work through our pension reform. So one option would be then to do what it would take to make a code amendment to suspend those payments, that would be obviously one option. Other option would be to look at that time supplemental retiree benefit reserve more on a long term basis, what to do with that, although I think that may -- that would be an option, but that would probably require more analysis and further time compared to a -- simply a suspension of the payments out ever that fund.

>> Mayor Reed: City Attorney.

>> City Attorney Doyle: Mayor, we've had conversations with tax counsel. There were some concerns initially. There is the ability to suspend it. As Alex indicated they require a code amendment at least with respect to Police and Fire. And the recommendation would also be for Federated, if the council wanted to go there, although we can probably do that by resolution. But there is a way to suspended and then for the long term discussion as to what to do with the program is -- you may want to follow up on that. But that's something we could be prepared to bring an ordinance if the council wants to have the discussion next Tuesday and direct us to come back we can come back pretty quickly with an ordinance. It's not -- it doesn't take a lot of drafting.

>> City Manager Figone: Mr. Mayor, I also would like, Alex or Rick, I believe time is of the essence is it not? That is another item we need to factor in there, Mr. Mayor.

>> Alex Gurza: Yes, normally, if there's going to be a distribution, normally that is made at the end of the calendar year, so normally those calculations come before the boards as early as November, and the boards meet in the first and second Thursday of November for payments usually in December. So in other words if there was going to be an action to suspend the earlier we can let the boards know of that that that's pending I think that would be -- that's what the timing issue is.

>> Mayor Reed: Well I was surprised when I looked at that time ordinance and we were even contemplating spending this money when we're so underfunded. I think that's a problem that we need to address at some point and however we can do this. But rather than eliminate it altogether, I think suspending it would allow us a opportunity to meet and confer, allow us to talk about the second tier rather than have that money gone because it's a few million dollars and in these days a couple million bucks seems to be a lot of money. So if we were to put it on the agenda on the 26th the action would be to direct staff to prepare an ordinance or can you have an ordinance prepared by then. I don't know how complicated it is to suspend something as opposed to completely redraft it.

>> City Attorney Doyle: And that really is a question I'd have to speak with the attorney that does the retirement. But I'm told it's not -- doesn't require a lot of drafting. Whether we can have something -- clearly we would require a sunshine waiver. But we would do the best we could, if you want to agendize it, and consideration of an ordinance, we could have something probably out on the street I'd say by Friday late afternoon.

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: Thank you. I just have a couple of clarification questions. At the Public Safety committee tomorrow we're going to hear the audit on the pension sustainability. An in the audit it talks about as of

June 30th, 2010, the balance in the SRBR for Police and Fire is 32.3 million and for Federated is 21.3 million. Obviously that's a pretty large amount of money. I was just wondering when we discuss this on the 26th would staff be able to share with the council in terms of is this fund restricted, where can it go to, what can we do with it if we decide to temporarily suspend it. I think just those clarification questions really help the council be more engaged and see what we want to do with this.

>> Alex Gurza: Absolutely, Councilmember Nguyen. Staff would be prepared if you put it on the agenda to prepare an overview on it including what you mentioned how much are in the accounts now and give you and the council some more background information.

>> Councilmember Nguyen: Great, thank you.

>> Mayor Reed: Anything else? I have one request from the public to speak. Take that now, Jay Wendling.

>> Mr. Mayor, councilmembers, and city staff, my name is Jay Wendling and I'm with the retired Police and Fire association. The only reason I wanted to speak was, nowhere have I seen a definition of this temporary withholding of the funds. Is it for the rest of this year? Is it forever? What is the council's thinking on this? The other thing is, I would ask the council and staff to remember, keep in mind, I have a long time police officer retired, his pension is \$1100 a month. With the foreseeable medical increases coming, we're probably going to either force this guy to eat Alpo or move out of state. We set this SRBR up so that the people retired the longest who are probably hurting worse than those most recently retired, be the long term people need the SRBR money to survive in this county. So I would ask you to keep that in your mind when you make a decision on this issue. Thank you very much. I appreciate your time.

>> Mayor Reed: Thank you. A couple of questions that Jay raises, first the temporary, I don't have a definition of temporary. I think that is something that we would want to discuss what temporary means and what we would do next beyond that and I think that would be part of the conversation for next week. I'm mainly interested in not spending that money until the council is comfortable that it's the appropriate thing to do given the fiscal conditions

of the plans. But I don't have in mind how long that might be. And then I am curious about how the funds are structured. Because Mr. Wendling is correct, that when the council created this particular version of the SRBR there was a lot of concern about people who had been retired long ago. And I'm curious if people who retired last year are going to be eligible for SRBR because most likely their retirement last year is a lot more than the retirement from somebody who retired 20 years ago. So do we know how the money gets allocated on that kind of a basis?

>> Alex Gurza: Yes, mayor we do. And at the council meeting we'll be prepared also to prepare you with a summary of the methodologies. It is as Mr. Wendling pointed out sort of a points system that gives people credit who have been retired longer but people who have been retired.

>> Mayor Reed: It's hard for me to believe that somebody who retires on 100,000, 150,000 a year ought to get a supplemental retirement benefit that is really designed to help people who are out 30 years ago and really small payments. I think that's part of the discussion of what do we do going forwards, is this thing properly structured, can we afford to do it and the reason to do a temporary suspension is so we can figure that out in conjunction with our stakeholders groups among other things.

>> Alex Gurza: Right mayor as you pointed out, besides -- if there's going to be a distribution there's options how to distribute. But the design of the program could be different. As you pointed out the current design could lead to payouts even when the plan is very underfunded, the funding ratio may be very low. There are other plan designs where this kind of feature is not even enacted unless the funding ratio is 100% or even over. So that no payments would go out if the plan is underfunded. So there's lots of options, so I think a temporary suspension would provide the council with time to fully explore all of those options.

>> Mayor Reed: I think one of the things that I would certainly like to talk about next week is what is temporary. And staff will have a chance to think about that between now and then.

>> City Attorney Doyle: Mr. Mayor, if I can recommend, I think there are a lot of ifs. And it would probably be best to have the discussion next Tuesday and then we would come back as soon as possible with any direction on an ordinance or resolution.

>> Mayor Reed: I would support putting this on the council agenda next week and I think the language ought to be to direct staff to prepare an ordinance so you can bring it back. Now that may be on a relatively short fuse to get it back rather than trying to have the ordinance prepared between now and Friday and getting it out to -- that way we'll talk about it and then people will have a chance to read the ordinance before we have to vote on the specific ordinance. I think that's probably the best way to do the agenda language. Vice Mayor.

>> Councilmember Chirco: I think that the council and the retirees are concerned about the sustainability of the pension fund. Whole while the 13th payment, I understand the intent of it and I think bringing back and having a discussion is appropriate. So I would move approval of this. We need to be sure that our retirees continue to be covered by the benefits that they paid for. I will move this item.

>> Second.

>> Mayor Reed: Okay, we have a motion to put this on the agendas for the 26th. City Manager.

>> City Manager Figone: Yes Mr. Mayor and Alex I'll look to you. I think we should probably put the boards on notice even if it's only up for council discussion next week so we can ensure there are no surprises. I just am really concerned about the cuts, the checks getting cut.

>> Alex Gurza: Yes, absolutely would want to notify the boards and other stakeholders as early as possible and also what we can try to do is put out a memo before Tuesday to at least answer some of these initial questions about the structure. We could do our best to put that out if you think that would be helpful.

>> Mayor Reed: I think that would be good if we could get that done. Further discussion on it? All in favor, opposed, none opposed.

>> Lee Price: Mr. Mayor, for further clarification, perhaps Rick could chime in, for further direction on the agenda, is this a motion to suspended payments for both retirement plans.

>> City Attorney Doyle: No I think it's going to be for the mayor's recommendation which is to meeting, discussion and action or direction to staff on be any possible amendments or resolutions which would suspend the SRBR payments. So I'll work with you on the language but that's my -- if a discussion and action item.

>> Lee Price: To come back with those documents.

>> Mayor Reed: It might be a Muni code change, it might be a resolution. But we won't have the final language in front much us because we're not there yet. Good enough on that agenda language. City Clerk, okay? So we'll go back to the agenda order to the review of upcoming study session agendas, Water District board coming up, I forget when.

>> City Manager Figone: November 8th, Mr. Mayor, it's a Monday.

>> Mayor Reed: Any other thing to talk about with the board? I understand trails, councilmembers are always interest in trails.

>> City Manager Figone: Yes, and staff will have a pretty extensive packet out that I've reviewed with ESD and they are working with Water District staff. As in years past they'll be pretty well organized.

>> Move approval.

>> Mayor Reed: Motion is to approve. That will be held here in the wing. November 8th, 1:30 p.m. in case anybody wants to know. Motion is to approve. All in favor, opposed, none opposed, that's approved. Legislative update I think we have nothing, unless somebody has questions for Betsy Shotwell, who's here. Public record, anything from the public record the committee would like to pull for discussion? I had a question about agenda -- item number A. It's a letter from McCarthy ranch which is related to item H-5, a letter from Milpitas and just wanted to note that the treatment planned advisory committee has decided to have a study session on the master plan so that we can get the entire committee up to speed on where the master planning process is. Our technical teams have had quite a bit of information on it but the committee members haven't yet. So this will be taken up relatively soon. And then when we get down to item H-5 we can talk a little bit further about Milpitas's request. Anything else on the public record?

>> Motion to note and file.

>> Mayor Reed: Motion is to note and file the public record. We have one request to speak, David Wall.

>> David Wall: Good afternoon, Your Honors. This is in reference to item number I. On the public record. With specifics, the memorandum of understanding with the Consortium for Police Leadership in Equity and I will read into the record item 2, scope of work. UCLA will conduct the following task. All of this is quoted, by the way. 2.1, conduct research with a goal of determining the existence or absence of racial/ethnic bias in SJPD's officer decision to contact and/or arrest individuals. This research will be conducted with particular focus on comparing so-called discretionary stops, i.e. public intoxication arrests, resisting arrests and disturbing the peace arrests versus so-called indiscretionary stops. This will require access to broad categories of arrest data which SJPD does to provide, agrees to provide, period close quotes. This agreement, Mr. Mayor, in reference to this report which is continually being suppressed from the City's Web page, is a complete material misrepresentation. The report that was given to the Public Safety, Finance and Strategic Support committee, the report calmed safe because we are fair, is a direct attack on the immigration aspects of cross deputization. This is in no way in keeping of what they have agreed to do. They have exceeded the scope of their work as their agreement in material sense and have utilized that agreement to create and further their own political agenda. Citing their first

citation on this report, deputizing discrimination is the causes and effects of cross-deputization in Salt Lake City, is what they did with their report to the Salt Lake City police department. This, Mr. Mayor, has to stop. We have yet to been ruled, have a ruling whether or not this report, safe because we are fair, can be published on the San José public record via the Web page because it is a public record..

>> Mayor Reed: Your time is up. Any other comments on the public record from the public? No, that concludes the discussion. We have a motion to note and file the public record. All in favor, opposed, none opposed, that's approved. Boards, commission and committees, we have item on to approve the Housing and Community Development Advisory Commission work plan for 2010 and 11..

>> Lee Price: Mr. Mayor, if I could just quickly introduce these two items. As you recall, two weeks ago we discussed the implementation of the manager's budget addendum 16 as it relates to boards and commissions. And so these two work plans are the first of many to come to the Rules and Open Government committee. These two committees have worked long and hard to establish a work plan for the next year, and so we are pleased to have these two before the Rules and Open Government Committee. And I think staff is here if you have specific questions regarding those work plans.

>> Mayor Reed: All right, this is the first of many that we'll be seeing. I have no requests from the public to speak on it. I'm sorry, I do have one request, but you can put your motion out if you want.

>> Councilmember Chirco: I would move to accept the work plan.

>> Mayor Reed: Motion is to approve the work plan. Mr. Wall, you want to speak.

>> David Wall: I have a problem with the housing department being associated with this commission on housing. To me, there's the demonstrative conflict of interest the argument of shepherding or providing insight is one thing. But this is a material influence as into the work product of this commission. And so I voice my opposition to this association. In addition, I think housing as a whole should be put on hold. In other words, the

moratorium. Primarily because of the fact of how the city has a loss of resources at their command to provide for the necessary services that these housing developments are going to require. It is unfortunate that this has taken place at any time in our history. But Mr. Mayor, you have no money for services. You should put a moratorium on housing. People have to leave the city if they can't afford to live here, period. You can't take any more people. You don't have the water. You don't have the services. You have to start thinking on these issues, Mr. Mayor. Thank you.

>> Mayor Reed: That concludes the public testimony on this item. One question on the work plan regarding the input on inclusionary housing lawsuit and ordinance changes. Is the commission getting into legal discussions or -

>> City Attorney Doyle: Well, I have a concern about that. I think to the extent that they're informed there's a lawsuit, and what the issues might be, is one thing. But these are items that typically we go into closed session for reason, and I would not expect to talk legal strategies or the -- anything of what I would think would be exclusive within the purview of the city council. So I can work with the housing department on that, to try to make sure that those concerns are addressed and if there's any future problem I can come back to committee.

>> Mayor Reed: Okay. Anything else? We have a motion to approve. All in favor? Opposed, none opposed, that's approved. Disability advisory commission, any staff comment on that? We are trying to create a framework that is relatively easy to administer, right?

>> Lee Price: Yes, that's right, Mr. Mayor. And thank you for mentioning that. So the council approved a template so that we have a consistent and standardized format for the work plans. And when the committees come back in a year with their annual report, then you will see an expansion of this template that will then give them an opportunity to demonstrate what accomplishments they've made on the work plan for the year.

>> Mayor Reed: Sounds good. I have no requests.

>> Councilmember Chirco: I would move approval.

>> Mayor Reed: Motion is to approve.

>> Councilmember Chirco: I just have a question to the City Clerk. Because this will be the first year of the reduced schedules, will there also be included kinds of an evaluation of the new strategy of the reduced -- and how the committees -- how the work flowed and if there was any obstacles, did it meet the needs of kind of the mandate of the committees?

>> Lee Price: I would say yes, in looking at the City Manager, Debra Figone, although we didn't specifically discuss that, I think that is definitely something we want to do as we move into the next budget cycle, to take a look at how well this worked, what the issues were, did it handicap in any way the work of the boards and commissions, and have that evaluation at that time.

>> City Manager Figone: Yes, I would agree, this in great measure about workload management, not about the good work of the commission. And so what we're trying to do is to ensure that the work of the commissions are really focused on the priorities of the council, with also managing the resources that we have to support the commissions. So I think an evaluation would be appropriate.

>> Councilmember Chirco: I think that's good. It gives the council the feedback that I think is helpful to their decision making.

>> Mayor Reed: Motion to approve. All in favor, opposed, none opposed, that's approved. Next item would be the designation of Councilmember Pete Constant as a voting delegate, and Councilmember Kansen Chu as the alternate voting delegate at the 2010 National League of Cities business meeting December 4th. Motion is to approve. All in favor, opposed, none opposed, that's approved. Next item would be status report on proposed amendments to Municipal Code part known as the graffiti abatement ordinance. Councilmember Nguyen.

>> Councilmember Nguyen: Thank you, mayor. I brought my memo to this committee back in September 2009, and the original recommendation was to establish direct accountability for juveniles who commit vandalism. And what I wanted to do was to see somehow if the city can impose a \$500 fine, and also to have these juvenile offenders complete the community service hours under PRNS leadership. But as I was working on this and working with the different departments at the county, we realized we're up against the California penal code, and in regards to the Municipal Code, that we can't prohibit tag or vandalism, I guess, has something to do with people view vandalism as art, and other view it as vandalism. And so now we're going back to trying to reestablish the collaborative group that the city staff from the cities actually working with the different departments with the county. But I was just wondering if staff can provide some clarifications in terms of how we can move forward to make this more effective.

>> Matt Cano: Thank you. Matt Cano, acting deputy director of Parks, Recreation and Neighborhood Services. I'm going to turn it over to Brandon Casper, who manages our anti-graffiti program and he can talk about how that group has started working already and will continue to work together.

>> Good afternoon, thank you. What we have done so far is after Councilmember Nguyen's request, we met as a collaborative group to kind of look into how we can work together and bring all the different agencies together, and find a common goal towards moving towards greater sanctions with graffiti. What we found was that the penal code was the mechanism that is commonly used for graffiti vandalism. And we decided that what was occurring was a lapse in communication between the different agencies. What we have currently done is establish a working group to bring them all together at the table and work on common goals and keeping the items and the goals at task, in the mind frame that we can work forward and work together on achieving the goal together. So what we've done so far is created the team. We've had a few meetings. We have worked on formalizing some memorandums of agreement which have been completed. We've also worked on trying to re-establish a tag class for juvenile offenders which would allow first-time offenders to be put through a class by San José police officers and have their parents attend and witness what occurs to graffiti offenders and have them talk to them. And we're also working with county probation to work on collaborating with their officers and getting everybody kind of on the same page. We found that some offenders with minor offenses were being given -- they were being talked to by

the probation officers and the probation officers were putting out the sentencing. Rather than a court system, that would normally be done with more of a larger scale offense. So we're trying to work with all the different groups and put things together so that everybody's on the same page and we're working together towards using all the tools that we have to create the best appropriate actions.

>> Councilmember Nguyen: Thank you, Brian. And I really appreciate the work from PRNS on this issue. Obviously, just in 2009 alone we had 19,000 tags and then in 2010, we had 29,000 tags. That's an increase of 10,000 tags that we see throughout our city. That was one of the reasons why I brought this forward. But since we can't impose stricter sanctions on this issue I was hoping in order just to keep these agencies as well as our city in line with the work that we are doing, if there's any possibility that we can bring this, like a quarterly report, either to the mayor's gang prevention task force, or to the Public Safety Committee, either on a quarterly basis or semiannual basis, so that we can keep track of you know what are some of the things that the different agencies who are involved in this collaborative can do to perhaps prevent some of these offenses from happening.

>> Matt Cano: Absolutely. This committee is a subcommittee of the mayor's gang prevention task force. We are planning to bring it there. We do biannual reports to NSC, and we can report out to the committee there as well.

>> Councilmember Nguyen: Thank you very much.

>> Councilmember Chirco: I also want to ask, there have been antilitter programs, anti-graffiti programs. And my concern is the staffing of these programs because we're working with the probation department. And I know programs have gone away because they can't afford the supervision required for these programs. And I think that would be an important part of your report-out is the continued staffing of these programs so that the city knows if these programs have ceased because the funding has been cut for the personnel that supervised the youth or the adults that engage in these kinds of activity. I think that should be part of your report-out.

>> Matt Cano: We will include that.

>> Councilmember Chirco: Thank you.

>> Mayor Reed: Any requests to speak, Tina Morrill.

>> Hi, good afternoon, my name is Tina Morrill, I live in the Vendome neighborhood. I read the staff memo and I was really interested in this. And I just wanted to offer a few thoughts as a community member and as a resident. First, in the memo I didn't see the word tag or tagging and I think that needs to accompany the word graffiti. Because both can be considered vandalism. But graffiti artists they would be very quick to tell you that most of the graffiti that they do is art. If you look at the urban dictionary, which I'm sure we all use, unlike graffiti, tagging usually takes less time and skill, as it's done in one color with a single can of spray paint or a thick marker. So there is a difference. I also feel as a community member the punishment for minors who are found guilty for this kind of vandalism needs to be strong. A strong message needs to be sent. I'd like to see a fine and community service hours. I think that's important. I would like the punishment to be tiered so that repeat offenders are required to put in more hours of community service and pay even greater fines. I also am concerned about using our resources to offer a tag class. And the reason is, I question the definition of success as it's referred to in the memo. I didn't see behavior change as part of the success that had happened. So my preference is to leave our precious tax dollars towards community programs that have been slashed instead of spending them on programs for kids who are maligning our community. But I'd like the city to consider designating public art spaces where graffiti artists who have a need to show off their art can do so. Different than tagging, it's graffiti art. It would provide a place for the art, and it would send a message to folks that hey, you know, this kind of diversity of artistic expression is encouraged and welcomed by our city. Thank you.

>> Mayor Reed: That concludes public testimony. Motion is to accept the status report. All in favor, opposed, none opposed, that's approved. I'll consider the request from Milpitas to agenda on council meeting agenda guiding principles for the San José-Santa Clara water pollution control plant master plan reconstruction and land use alternatives. I think this is a little bit premature. The treatment plan advisory committee is having a study session on this, but I have a question as to when we will be looking at that plant master plan on the council agenda. I think it's some time in December.

>> John Stufflebean: Yes, John Stufflebean, director of environmental services. The current schedule is that the plant master plan would go to T&E in December and also to TPAC in December. The study session is now being scheduled for November 19th, for the study session for TPAC, and would come to TPAC again in December, and come to council on December 14th, and could be carried forward to January, depending the time available on December 14th to have a discussion about it.

>> Mayor Reed: What will be in front of the council then December 14th?

>> John Stufflebean: That will be the current status of the plant master plan which includes at this point our technical plan for the next 30 years for in terms of improving the plant, plus it would be the draft land use recommendation. We're not asking for action on that, we're just looking for feedback on that. Officially that will be coming to council in April.

>> Mayor Reed: Okay, well I can't quite figure out why Milpitas is so intent in trying to get this on the council agenda other than they wanted to talk about it at TPAC and wasn't able to talk about it on TPAC unless it was on a council agenda. That's what I gather from the letter from Mr. Williams. But it looks like it's going to be on council agenda December 14th and that would certainly be an appropriate time for Milpitas to come in and talk about whatever it is they want to talk about, that would be one opportunity. And of course they can participate in the TPAC study session as members of the TPAC committee. So why don't we hear from Milpitas and find out exactly what it is they are trying accomplish. Tom Williams is here, the City Manager, and then we have Joey McCarthy and David Wall who want to speak on this as well.

>> Thank you very much and good afternoon, Mayor Reed, members of the committee. My name is Tom Williams, City Manager for the City of Milpitas. Quite simply we've been asking for more than a year that we have an action item agenda'd at the TPAC for consideration of Milpitas' guiding principles. I think you have my letter and you have a resolution that was adopted by our city council and we have been trying to work with your city staff and we've been directed that we're not allowed to agenda'd an item on TPAC for an action, unless it is on the City of

San José city council agenda and as such we are forced to come and make this request. I do believe that the December item as it's been communicated to us is the preferred master plan alternative. And I think if that is in fact the case in December, Milpitas, McCarthy ranch property owners which McCarthy ranch has probably the most impact as property owners as to what happens in the future of the treatment plant than any other property owner as well as the City of Milpitas. We don't believe that we've been adequately heard, we have not had the opportunity to present our guiding principles to TPAC for an action. And we are just looking to have a fair opportunity to present our guiding principles for consideration as a recommendation from TPAC to the City of San José city council. So that is the underlying purpose of our request. We have not had that opportunity. We've been asking for more than a year and a half and it's taken myself as City Manager to write the letter to yourself and the rest of the councilmembers and come down here today to see if we could actually be treated fairly as a tributary agency with a great stake hold in the future of the treatment plan. So with that, that is the underlying reason for our request and I'd be happy to answer any questions you may have.

>> Mayor Reed: I do have accumulate of questions. So the schedule that Mr. Stufflebean just laid out for TPAC study session, TPAC agenda and then council agenda, does that schedule work for getting your issues in front of TPAC and ultimately in front of the city council?

>> Mayor, it would work if the agenda item for the study session or workshop is also agendized at TPAC as an action item. And if it's agendized as an action item then that would fulfill our desire, the City of Milpitas.

>> Mayor Reed: I think the action item at TPAC would be the December TPAC meeting after the study session in November. And before the council gets it on the council agenda, would be -- or the routine way that the first -- I forget when TPAC meets, but it meets before the city council meeting on the 14th.

>> The problem that we have is as the staff is formulating the master plan, we have not had the opportunity to review our comments and recommendations to TPAC to thoroughly formulate a master plan alternative. And so that is what we are seeking. We believe the plan does not address our issues, and we just want fair consideration

by TPAC in their recommendation for us to present and for TPAC to take an action on our city council resolution as well as our recommendations for the plant master plan.

>> Mayor Reed: Couldn't that be done at that time December TPAC meeting after the study session when people invest a few hours getting up to speed?

>> The problem we're -- if it is properly agendized and it's an action item, yes, that fulfills our request. But again, for over a year, year and a half, we've been asking for that. We've been placed on the agenda but when we're placed on the agenda it's not an action item.

>> Mayor Reed: Right. Since I've chaired TPAC and Councilmember Nguyen sits on TPAC, we've seen it come and go. A couple of times. Let me ask the city attorney, are there any issues that we have, since we're in charge of TPAC staff-wise of having an action item agendized on the December meeting? Considering the council is taking it up on the 14th, I think it would be important for TPAC to tell us whatever TPAC wants to tell us.

>> City Attorney Doyle: It's an advisory body and from Mr. Stufflebean's comments about the agenda item on December 14th and subsequent items coming back in the spring on the same matter, I think it would be appropriate. My understanding is the technical advisory committee, the staff to TPAC sets the agenda and puts it together, and you can direct them to get that on as an action item.

>> Mayor Reed: Okay. So we could make that recommendation here, today, in considering --

>> City Attorney Doyle: Yeah, I think you can refer -- this has been agendized, and you can refer it to staff to bring to the TPAC staff to include as part of the agenda.

>> Mayor Reed: Okay, have a couple more people that want to speak. Thank you, Mr. Williams.

>> Thank you, mayor, thank you, councilmembers.

>> Mayor Reed: Joey McCarthy and David Wall.

>> Good afternoon, my name is Joey McCarthy of the McCarthy ranch. Tom kind of mentioned our interest in this project and the plant master plan and the impacts it does have on our property. We have large holdings that are just across Coyote creek that are significantly impacted by this plant master plan. And we've been trying to get as involved in this process as we can. As the odors that are emitted from the plant have a severe impact on our property. I think Tom addressed the issues in getting agenda'd on that TPAC meeting coming up is a step in the right direction and we appreciate that you guys are looking at the issue, and devoting time to it. One concern that we do have is the timing. We've been trying to work with staff in getting information on the plant master plan so that we can also analyze what they're planning to do and the preferred alternative they are going to recommend to city council. Because we don't want to get behind the 8-ball here and have them present an option to council and not have time to give our input as to what impacts that's going to have on our property and also the city of Milpitas. So we ask that the timing be taken into consideration before the decision is made and that the public input and the private property owner's interests are taken into account. Thank you.

>> Mayor Reed: David Wall.

>> David Wall: I object to the City of Milpitas poor-mouthing this event. What is required is a full exigence of the land contract between the McCarthy Ranch and the city of San José and the water pollution control plant therein. This is nothing more than wanting to open up a previously established contract that precluded any residential housing developments in this property. They're skillfully using the plant master plan as a de facto can opener to open this agreement up. I, Mr. Mayor have very serious problems, for example, you having a Milpitas councilmember on your personal staff, because this is very foreseeable. When it comes to TPAC matters I have more hours logged into that cockpit than you or any member in that room combined. I have watched this issue over the years with some matter of trepidation, because of the enormous cost of moving sludge drying operations of the plant. It was quoted \$500 million to remove sludge drying to accommodate this residential housing development which is currently prohibited by the agreement already entered into. So it is imperative that this

agreement be made public and the rationale behind why the City of San José would allow opening this agreement for any type of consideration. This is very disturbing to me. Now, as members of TPAC you and Councilmember Nguyen have steadfastly approved of opening, permitting this residential development. That, too, is very contrary to the fiduciary responsibilities you have to the City of San José citizens, who are going to bear this enormous cost to relocate sludge drying operations. Thank you.

>> Mayor Reed: That concludes the public testimony. There's been a question about the sequencing of events. So on December 14th we'll have an item on our council agenda. When will the staff report be out for that? Seems to me that the concern is that the staff is going to make a recommendation that Milpitas thinks they're not going to like, McCarthy ranch thinks they're not going to like, but that's life in government. People aren't always happy. But when will it come out, when will they have a chance to read it? When will they understand what the council is considering so they can come make their case to the council?

>> John Stufflebean: Sure, the gist of the plan will be discussed at the November 19th TPAC meeting. The staff report would need to come out a week prior to TPAC in December. So the actual official memo and report would come out a week prior to the TPAC meeting, which is I -- it's the second Thursday of December which I forgot what day that is, 8th or 9th, something like that.

>> It's the 9th. December 2nd.

>> Mayor Reed: Presumably December 2nd there will be a memo out, if not before.

>> John Stufflebean: That's correct.

>> City Manager Figone: Mr. Mayor, that doesn't preclude staff from issuing a supplemental if something emerged that you thought council should be aware of, correct?

>> John Stufflebean: That's correct, yes.

>> Mayor Reed: People might not like what staff recommendation is, but staff has to do their job and make their recommendation. And then we have the public discussion and council makes their decision. That's the way it works. But main thing is people have a chance to get engaged and see what you're recommending. And I think the sequence we've laid out here with the study session, the TPAC meeting and the council meeting is a reasonably fair way to get the issue into the public forum for some kind of decision making. Council could always say we don't like what the staff recommended, we want to do something different. And I think my question is, will we select a preferred alternative on December 14th, or are we just seeing the overview and ultimately will make a decision on the preferred alternative at some later date?

>> John Stufflebean: Yes, the later -- you will not be selecting the preferred alternative on the 14th. You will simply be seeing the staff recommendation at that point and will be seeking additional input from the city council. The reason we're presenting it actually TPAC and T&E in December is to make sure the council is comfortable with the prior that we will then take back out for one more round of public input prior to bringing it back to council for actual April consideration for environmental work.

>> Mayor Reed: So if there's somebody who thinks that you haven't done your alternatives analysis well enough or you missed an alternative, they can make that case on December 14th and the council might decide we want you to do something different and you'll have some time to do that before we have to make a decision.

>> John Stufflebean: That's correct.

>> Mayor Reed: Councilmember Nguyen did you have something?

>> Councilmember Nguyen: Just so I'm clear, so at the December 14th, we're also considering the City of Milpitas guiding principles, is that correct?

>> John Stufflebean: If my understanding is correct that's the action we're prepared to take, yes.

>> Councilmember Nguyen: Okay, so I would like to make a motion to agendize, as part of the December 14th to put on the agenda the adoption of the City of Milpitas guiding principles.

>> Councilmember Chirco: I have a question. Will that come with a -- I looked at them, and because I'm not on TPAC, they don't mean anything to me. Will it come with a staff analysis of the recommendations from Milpitas?

>> John Stufflebean: Yes, ma'am, it will.

>> Councilmember Chirco: Okay, then I'll second that motion.

>> Mayor Reed: Will the motion also contemplate that those are on the TPAC agenda, as well as an action item, so TPAC can give us whatever advice TPAC wants to do?

>> City Attorney Doyle: Yes, if it's going to be on the council agenda. I didn't know you were going to actually going to agendize the matter now, for December 14th, just to let it go through the study session, the TPAC process, and with the recommendation from TPAC, the rules committee could then decide whether or not to place it on the agenda or not, but that's your call. I mean, it's really a question of timing.

>> Councilmember Nguyen: Go ahead, Vice Mayor.

>> Councilmember Chirco: I would prefer that strategy, because I think the council would benefit from the TPAC report, and staff, when you do the presentation and you take it back out I'd like to decide better as a councilmember what this all means in the greater picture of the treatment plant. I know -- how many members are there? How many city partners do we have in the treatment plant?

>> John Stufflebean: The plant serves eight cities, and there are -- yeah, there are, depending how you look at it, five representing the TPAC.

>> Councilmember Chirco: I would prefer, then we could have the discussion at that time, because there are a lot of players in our treatment plant. Obviously Milpitas is one of our partners and needs to be listened and respected. But to bring the information back to educate the council, I think would -- I would feel more comfortable. So if we could have that -- I could second that motion or I would make a substitute motion.

>> Mayor Reed: Well, that would mean that it's on the TPAC agenda, first meeting in December as an action item, which was the request from Milpitas.

>> Councilmember Nguyen: I guess my concern now is when does the full council have the opportunity to review the guiding principles? If we don't have that on the agendas somewhere, then we would go back to square 1 where we would have no information except for this letter so --

>> City Attorney Doyle: I don't have an issue with reviewing the guiding principles at the December 14th meeting, is part of the context of the overall discussion. But what I heard the motion was adoption of the guiding principles, and I think that we're far away from having any recommendation on that. I think I would like to see what TPAC says before we make a recommendation one way or the other. But we can agendaize that they would be reviewed, they are Milpitas' guiding principles, and they would be part of the discussion, but not necessarily adopted.

>> Councilmember Nguyen: I would modify my motion that as part of the December 14th city council meeting, that we review the guiding principles of the City of Milpitas.

>> Councilmember Chirco: Okay, I can second that.

>> Mayor Reed: All right, and then staff should be prepared to respond to those, as they have already been working on it, anyway. On the motion all in favor, opposed, none opposed, okay with the City Clerk, City Attorney, City Manager, we've got that -- enough clarity, all right. I think next item is additions to committee agendas, we

have a request to add a monthly report to the Public Safety, Finance and Strategic Support committee. Regarding police operations and performance. Motion is to approve, all in favor, opposed, none opposed, that's approved. I think open forum is the only thing left. I don't see anybody here who wants to speak -- Mr. Wall, surely you wanted to speak because you waited until the end of the meeting. I know it was exciting, but I figured you wanted to speak.

>> David Wall: Bless you for all your concerns, Mr. Mayor, outstanding . First I want to give my support, undying support, for the San José fire department. Our honorable firefighters really just want a reasonable wage. And remember, they're the only group of stir employees that enter burning buildings to save us from burning to death. I'm sure Mr. Mayor you might if called upon do it on your own volition but these folks do it all the time. And I support them and I don't think that they should have their wages cut because of that one unique aspect. They enter burning buildings putting themselves at risk to burn to death by saving us from burning to death. The other issue is we are overdue from a memo from our honorable and learned City Attorney with reference to this report, being a public record, and the property rights being able to whatever, to be published. I'm still waiting for it. It's been two weeks. I do not fault the city attorney's office because they've suffered budgetary cuts unnecessarily, I might add, because of the great work that they do. So I'm at a quandary. I'm going to start referencing this document in toto in my correspondence to you. So we'll see if that gets censored. It's just that the City of San José residents should know what they're paying for. They have paid for this and are continuing to pay large sums of taxpayer money via the police department budget. You can look at that MOU. They've dedicated a lieutenant to deal with this group, not to mention countless hours of police officer time. Lastly I would like to see funding given to the downtown business association, be transferred to the office of economic development, if you are going to keep that group, since they're going to lose Redevelopment Agency funding. You get more bang for your buck in my opinion. Thank you.

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