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City of San José Rules Committee meeting.

>> Mayor Reed: Meeting to order. This is Rules and Open Government committee meeting for February 18th. Any changes to our agenda order from what we have? No, okay. Start with a review of the city council agenda for February 24th. Anything on page 1? Page 2 or 3? Page 4 or 5?

>> City Attorney Doyle: Excuse me, item 2.7.

>> We're going to be dropping that.

>> Mayor Reed: Grant from California energy commission's Resco initiative.

>> I think we're going to be dropping that, there was an issue of the matching funds.

>> Mayor Reed: 2.7 be dropped. Anything on 6 or 7? 8 or 9. 10 or 11. I think we should look at the downtown entertainment zone items, give people a little bit better idea on the time. We'll come back on that. See what else is on the agenda, anything else on 10 or 11? 12 or 13? Item 7.2, application of living wage policy for water pollution control plant, the TPAC committee asked us to defer that so they could take it up at the next month's meeting. So we should drop this and just renote it after it's been through TPAC Santa Clara, needed a chance to talk with their staff, so drop that one for now. Anything else on 12 or 13? 14 or 15? 7.3, commercial waste system redesigned, look to me like the committee was not through with that, there was a supplemental from the committee saying they were going to take it up again on March 3rd.

>> City Attorney Doyle: We have been in discussions with the attorney for the Teamsters. That issue is still -- we're still in a dialogue. So we've planned to report back to the committee on March 3rd.

>> Mayor Reed: That is not ready for the agenda. It just doesn't belong on the agenda. The committee's already got it. They don't have to send it to us I think. 7.4, committee had a recommendation, we're still working on that and we do have memo from the chair, saying that should just stay on the committee agenda for now, and not on council agenda, so that should be dropped. Anything else on those pages, 14 and 15? 16 and 17?

>> I believe we have a request to defer 11.2, right, Lee?

>> Mayor Reed: The conditional use permit, north King road.

>> Councilmember Liccardo has requested that this item can be deferred so they can have further conversation with the applicant and the community and perhaps schedule it to come back sometime next month.

>> Mayor Reed: That's an offsale of alcohol, conditional use permit at King and maybury so just drop that and re-notice, it's all we need to do?

>> Well, it's an administrative hearing so we need to --

>> Lee Price: Drop so we don't have a date?

>> City Attorney Doyle: Defer it one week so we can go through there.

>> Until the next evening.

>> Mayor Reed: Next evening meeting which will be March 10th. That's the end of the council agenda, in addition, there's another agency item that we should hear during the evening, we'll hear in a nine. Back to the downtown issues.

>> The agenda is fairly light until we get to 3.5, and we're dropping several items under 7. So --

>> Mayor Reed: Well, we have looks like a half a dozen ceremonials but four of them I see are in the evening.

>> Mostly in the evening.

>> Mayor Reed: Are we going to have arguments over these historic landmark initiations on the consent calendar?

>> I don't think so.

>> City Attorney Doyle: Those are all private-initiated so there shouldn't be any problem.

>> Mayor Reed: Consent calendar shouldn't take very long.

>> Right.

>> Mayor Reed: So we'll get to 3.5 pretty quickly, anyway. Not before 2:00, though.

>> I don't think so. Probably by 2:00 we'll be there.

>> Mayor Reed: We don't need to set a special time, almost the first business item on the agenda, so we'll let people know that. Requests for additions to this agenda? Request for a proclamation from my office and Councilmember Constant's office, regarding first Tee week, that should be reflected as mayor/constant request.

>> Got it.

>> Mayor Reed: That will be in the afternoon, so 3:00 in the afternoon or 3:00 in the evening, I think.

>> First tee as in golf or shirt?

>> Mayor Reed: First tee as in golf. We'll have another one for tee shirt day.

>> Councilmember Constant: And another one for tree day. Get them all.

>> Mayor Reed: And tee shirt day will be in July.

>> Councilmember Constant: I'll make a motion that we approve as amended with the adds.

>> Second.

>> Mayor Reed: Motion is to approve as amended. All in favor? Opposed? None opposed? That's approved. Takes us to March 3rd agenda. Anything on page 1? Page 2 or 3? Page 4 or 5? 6 or 7? That's a light agenda, it's election day. I'm going to be in Washington. Vice Mayor Chirco will chair the meeting. Looks like a relatively light agenda. Any other requests for additions? Excused absence for Councilmember Chu, and Councilmember Constant's travel to Washington, and Councilmember Constant's excused absence for travel to Boston on city to city trip. Excused absence for me for my trip to Washington first week in March.

>> Councilmember Constant: Mr. Mayor, I don't believe that's a typo, I'm not sure if it means CED or TE, any of those other committees. Just got changed, so we need to clarify that.

>> Lee Price: We'll make sure it's the right committee.

>> Councilmember Constant: Okay.

>> Mayor Reed: Any other additions or changes?

>> Councilmember Constant: Motion to approve.

>> Section.

>> Mayor Reed: Motion to approve as amended. All in favor, opposed, that's approved. Redevelopment agency for the 24th. Anything on page 1? Page 2 or 3? Page 4 or 5? Page 6 or 7? 8.3, which is the building agreement, for San Pedro square, I think should be heard in the evening. Don't have much else that evening. We have three ceremonial items, only a couple of minor land use items on there. So we should do that in the evening.

>> Mr. Mayor, if I may and members of the committee, I'd like to point out that item 8.1 which relates to Safeway and the ADA project and 8.3, were posted in length 14 days prior to the packet going out.

>> Mayor Reed: Okay, then we're good to go then on this date.

>> That is correct.

>> Mayor Reed: Any other changes to the agenda? Start that item that 8.3 to the evening agenda. Okay, all in favor? Opposed? None opposed, that's approved. March 3rd draft agenda. No meeting?

>> No meeting for the redevelopment agency on the 3rd of March, Mr. Mayor.

>> Mayor Reed: Okay, no action to take on that. Next area of the agenda is upcoming study session agendas, 5.1 which is the green vision annual report study session for March 9th. Any changes on that? Anything else we need to do about it?

>> Councilmember Constant: No, motion to approve.

>> Mayor Reed: Okay. Motion is to approve. All in favor? Opposed? None opposed, that's approved. Takes up to legislative update. We'll get a verbal update about Sacramento. Betsy Shotwell.

>> Betsy Shotwell: Betsy Shotwell, director of intergovernmental relations. Prior to the legislature adjourning, senator cogdale was replaced by senator Hollingsworth. They were still short the one vote necessary to pass the budget and then they were going to break and reconvene right now as we speak. I know the governor had a brief press conference. We can only imagine what the message was. That said, our lobbyist continues to work diligently. It would be a minor understatement to say it's been 24-hour sessions, late into even evening as this progresses. And that's my report for this week. I was hoping last week, to have a little bit better news. And we're continuing to work on it and Roxann is working with the staff of the senate offices as well, continually working with them.

>> Mayor Reed: Okay, questions. Nancy.

>> Councilmember Pyle: Betsy, 20,000 letters have already gone out is that correct?

>> Betsy Shotwell: My understanding they have. They have to conform to a certain number of days in advance and the sum total would be 10,000 affected July 1.

>> Councilmember Pyle: And those are basically pink slips?

>> Betsy Shotwell: Correct.

>> Councilmember Pyle: And the second question is: The legislature is already out of compliance with the time limit that they had in revenues to coming to a conclusion. When that happens, I have no idea what the charter rules are. In other words, who makes the decision, if they can't?

>> Betsy Shotwell: I have to say, I have to admit I've never been asked that question before. Because in my entire career they've probably missed a deadline perhaps every year and pushed the envelope perhaps into now. Our City Attorney might know.

>> City Attorney Doyle: I'm liking what Betsy said, but bottom line is, there really aren't any sanctions, while the constitution has requirements and deadlines, I think there is some question as to who has authority to continue to make payments or not.

All that needs to be sorted out. I think at a minimum, there needs to be some definition as to what are the consequences for failure to meet the deadlines and who can do what. Because this is getting more to be the rule, not the exception.

>> Councilmember Pyle: And at this point, I haven't heard any complaints from constituents. But right around March 1st we're going to get quite a few complaints.

>> Betsy Shotwell: Absolutely. And I think you'll see initiatives starting to circulate in the parking lots for 2010 to address these issues.

>> Councilmember Pyle: Thank you.

>> Mayor Reed: Okay, thank you. Move now to meeting schedules. 7.1.

>> Yes, I'd like to make a verbal change on the attachment. We're cancelling the March 12th study session, the mayor's March study session. And Thursday, February 26th we are releasing that date. We don't have a topic that staff has come forward with.

>> Mayor Reed: Okay. The mayor's March budget message will be discussed March 10th, during the council meeting.

>> In which 17th. .

>> Mayor Reed: And the vote is March 17th is the way it's scheduled. So we'll release it on March 6th. I'll explain it on March 10th and we'll vote on it on March 17th is the current schedule. That's why we don't need this study session.

>> Councilmember Constant: So I'm sorry, which one are we getting rid of on here?

>> Mayor Reed: February 26th is no longer a study session. March 12th will no longer be a study session. Want to keep that open in case, should keep it on there, it's not going to be a March budget message.

>> We're scheduling the special CED. We've already filled that.

>> Mayor Reed: Working to fill that spot even before it's vacant. so we have staff's recommendation. Anything else to change?

>> Councilmember Constant: Motion to approve.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion is to approve as modified. All in favor, opposed, none opposed, that's approved. 7.2 is our city-county annual meeting recommendation to set the date, September 30th, from 9:00 to 12:00.

>> Councilmember Constant: Motion to approve.

>> Councilmember Pyle: Second.

>> Mayor Reed: We will work on the agenda items for that at some later time. It's usually a process that I work through with the president of the board. Motion is to approve. All in favor? Opposed? None opposed, that's approved. Item 8 accountst public record. Anything from the public record? Anybody wants to pull for discussion?

>> Councilmember Constant: Motion to note and file.

>> Mayor Reed: Motion is to note and file. Is that a second, Nancy?

>> Councilmember Pyle: That's a second, yes.

>> Mayor Reed: Had a question about item K which is 1300 letters addressed to mayor and council, e-mail. How do you keep track of that? Are those ones just the clerk's office has received or when we get a barrage of e-mail like that you are collecting them from council offices?

>> Lee Price: All of these, the City Clerk, the generic box for City Clerk was CCed president but any time the clerk's office was copied, that's how we had a count. That's just a sample. All the e-mails looked identical, just with a different name. We have those in our office.

>> Mayor Reed: Motion is to note and file. All in favor, opposed, that's approved. Appointments to boards, commissions and committees. Silicon Valley workforce investment network board nomination. Recommendation to appoint Brian Chrisman, Ceo of Borgata recycling. Of Gilroy, that's a recommendation, he fills a spot, specifically required to be private sector representative.

>> Councilmember Constant: Motion to approve.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion is to approve, all in favor, opposed, none opposed. 10.1, resolution confirming and indicating current support of land use designations on former San José medical center site. That was deferred from a couple of meetings ago. The question is whether or not that is ready to go to the city council.

>> City Attorney Doyle: In your packet we have a memo which addresses the request. It was pursuant to a request from Councilmember Liccardo, resolution stating council support for land use designation, for the current medical center downtown. The Rules Committee direct us to come back with what that proposed resolution would look like. It's in your packet. We feel this is prepared to go forward to council if the committee wants to place it on the council educated.

>> Mayor Reed: Okay, does anybody here want to speak on the San José hospital site? Roma.

>> Roma Dawson with Councilmember Liccardo's office. Mayor and Rules Committee members, our office had just one question. I know there were some stakeholders that had questions about the resolution. And we were not aware if there had been adequate opportunity for all of those folks to get their questions answered.

>> City Attorney Doyle: I know we had been sharing the drafts with Mr. Norm mationi who is the attorney representing the property owner. Beyond that I don't know.

>> Mayor Reed: Well, we could defer it on our agenda for a week. There's no immediate rush to get it to the council.

>> Thank you very much. That would be our request then.

>> Mayor Reed: Why don't we do that.

>> Councilmember Constant: Motion.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion is to defer it one week on our agenda. All in favor, opposed, none opposed, take that up again next week. 10.2 is the auditor's monthly report for January 2009. Sharon Erickson is with us.

>> Sharon Erickson: Good afternoon. This report summarizes our activities during the month January, 2009. During the month we issued the first SEA report and I'm pleased to report we distributed nearly 100 copies, I keep rubbing this in to neighborhood leaders. We also notified the city's boards and commission of its availability on the web. We met with the city's labor alliance and made those copies available. We hope you would forward the link to your constituents, as well. This report is about accountability and we need to get it out to the public in order to be accountable. We are working on a follow-up and white paper with the City Manager's office following up on lessons learned during that process. Also during the month we met with staff, we continue to meet with staff on various retirement issues, as they surface. And we'll be working with them wherever we can, to launch audits as needed. Our assignments in process: This week, while we have released the Team San José review, it is on the Public Safety finance and strategic support agenda for Thursday. The semi annual compliance audits of the city's investment programs are going very well. Macias and Gini are doing those reviews. We are going to tentatively attach those to the finance department next at their quarterly investment reports which they issue anyway. So rather than do a separate report we're just going to attach it to their report, to the relevant report. The O and P bond, forward to the Public Safety, finance and strategic support in April. I just wanted to let you know, our audits of the auto theft and the San José conservation corps, we're going to push those off a month so we have more time to work out issues with them in advance. That's my report. I appreciate acceptance.

>> Mayor Reed: Questions.

>> Councilmember Pyle: I would like to move for approval, I would also like to compliment you. This is absolutely fantastic. I love your blue book. The audit of City of San José. There were several requests for that and I really appreciate it.

>> Councilmember Constant: Second.

>> Mayor Reed: All in favor, opposed, none opposed. Item 10.3 and 10.4, related, healthy neighborhood venture fund, finance the crossing guard program, I got another memo that came out today. Councilmember Liccardo and Kalra, another item related to Healthy Neighborhood Venture Fund and crossing guards. Take them all up same series of issues I think. We have a previous memo or memos that we've had on this, has been deferred a custom times, didn't have a -- didn't have a full committee here to take action on it. First let me say, we're going to fund the crossing guards. We funded them last year. We'll find the money this year. Exactly where the money will come from is a council decision, we're in the middle of the budget, on March 6th I'll release the mayor's budget message, we'll

discuss it in council and the 17th is the vote on it. And those are opportunities to deal with the funding issue. I think there is a process question in here that we may need to have the council deal with before we get into the budget sequence. And that is, when the decisions get made relative to when the council makes its budget decisions. As I understand it, the staff was planning on releasing their recommendations for Healthy Neighborhood Venture Funding on March 2nd. I just gave you the schedule for the council's deliberation on the budget message two weeks after that. So I think there is a sequencing question that the council may need to decide on the council agenda on the 24th about what is the appropriate time to make those decisions. But I have looked and haven't seen any clear council direction of that sequence, other than the budget message and the budget schedule that the council has approved. I don't know why we have to release the staff recommendations on March 2nd. They could be deferred until after the council finishes the budget process, which I think would be an appropriate thing to do. So that we're not making decisions, staff's not making decisions before the council has a chance to make the decision. But whether or not Healthy Neighborhood Venture Funds are used for one thing or another is pretty much unrelated to the crossing guards. It is two different budget issues or three, depending on how you look at it. Councilmember Constant, you started this conversation.

>> Councilmember Constant: Yes, I started the mess, thank you. First of all, just I believe, and I'll defer to the City Attorney here, but in order to discuss the memo from Councilmember Kalra and Liccardo, we need a waiver of signature. Because multiple memos require four days sunshine to discuss. I'm willing to discuss them but we need to stay consistent, see if the City Attorney or clerk have anything to add.

>> City Attorney Doyle: That's consistent with the council policy on multiple signatures, the difference between a single signature memo versus more than one. I think we received this, this afternoon, just before this committee meeting.

>> Councilmember Constant: I'd be willing to make the motion so that we can discuss it. And I've got several comments to make on the whole three memos.

>> Councilmember Pyle: I would certainly second that.

>> Mayor Reed: Okay, we have a motion to consider the memos. Since it's related to two others that we have. I don't think it's a big sunshine issue. All in favor? [ayes]

>> Mayor Reed: Opposed, none opposed, okay.

>> Councilmember Constant: So thank you for that. In regards to this whole issue of HNMF and the crossing guards, what this issue has brought to light, I just want to emphasize what the mayor mentioned, we have processes that are out of alignment with each other. And when I first discovered that the HNMF cycle had been accelerated, and that it was going to -- the process was going to create a situation wherein funds were committed and potentially distributed before the council had had a chance to take an action on the budget, it bothered me. And in particular, with the issue that we had with crossing guards that perennially come up on the chopping block, which gets a large number of constituents in an uproar. So that's when Councilmember Oliverio and I and initially Councilmember Herrera as well, put out the memo that we did, because we did not feel it was prudent to allow the train to leave the station and arrive at its destination before we had a chance to make important decisions on how we were going to fund programs within our budget, and how we're going to allocate money before it gets distributed. Since then, when I initially talked to staff, I was told that the reason that this was being done is that it was pursuant to council direction. I have been unable to locate that council direction, and follow up with staff. I think it's clear that there hasn't been direction to do that. There is process discussion, and there has been discussions at committees. But the city council never officially moved the funding cycle ahead of the budget cycle. That's why Councilmember Oliverio and I put out our second memo which is dated February 12th, which is basically saying that we should not commit funds before we've had a budget discussion and have decided whether or not that they will be allocated. We know that over the last year or so, there's been a lot of work in relation to our budget deficit and our ongoing structural budget deficit. And the City Manager has looked at and management partners have analyzed the possibility of how we use HNMF funding. One of the management partners' suggestions or strategies was to put HNMF into the General Fund and to compete with all other programs and services for distribution. It would be premature and improper, I think, for us to dedicate those funds before we have that budget discussion. Because we've had all this time of work, of multiple different groups, we've had the consultants' reports, we've had the mayor's ESAG group, other structural deficit groups talking about these ideas and strategies, and before we've had a chance to weigh in and strategize, saying not only have we moved HNMF up a couple of months but we're committing those funds for two years. We're pretty much locked up from the council being able to make budget decisions for two to three years in a

time when we have a budget that is increasingly getting worse, daily. We know it's getting worse at an international level, a national level, a state level. Our budget numbers are continuing to degrade. And we're in a different world financially than we were six months ago, when the committee that discussed this, discussed it. So I think it's imprudent to do anything but realign our processes. I know in the past we had similar issues with B.E.S.T. funding because of the budget cycle, and that was changed so the council could make all their budget decisions, and once everything was finalized, then we could go forward with awarding money with another process. If I'm correct, the B.E.S.T. funding was moved to a cycle end of September, early October. So that's how we got from where we were initially trying to stop this train and derailing it before it got to its destination, and saying now that we know we have a flaw in the system, let's see what we can do to realign it and that's the intent of the first memo. The second memo is, we understand all this, let's refer this memo to the budget process. You're right, mayor, budget decisions belong in the budget process. And if we can adjust the HNVF cycle so that it's at the appropriate time then we feel very comfortable that we can discuss this during the budget process when it is more appropriate. And then lastly, if I can comment on the new memo that I barely had a chance to read, because it came out less than five municipalities before the meeting, it's flawed in several areas. One is, it's asking us to send something to council that we've already sent out to the city schools collaborative. That's item number 2, which was originally a memo from Councilmember Pyle to look at a trained volunteer program for our crossing guard system that came to the Rules Committee previously, we deliberated that and sent it to the schools city collaborative and have not had that come back to us. The HNVF recommendation number 3 regarding ways that staff can reduce the cost, part of that work has been done already, by the report from the management partners group that talks specifically about the benefits of moving the HNVF fund to the General Fund because that does greatly reduce the administration cost of the fund. And then finally number 4, had the authors of this memo read the memo that was put out for this packet on time, last week, you would see that it is moving this item to the budget process, where it does belong, if the HNVF cycle is put back where it should be. Because it got moved without council direction. So that's my long-winded comments.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: First of all, there are several items here that I think we need to take a good, hard look at. The timing, as I recall -- and it did happen on my four years -- was changed in order to allow the nonprofit organizations to continue to exist while the state budget was concluded. As you know, it is rare that the state manages to end their budget process on time. So nonprofits that had to wait way beyond July 1st, and very often into September, could not continue to operate with that in mind. Keep in mind that if we were to close up the nonprofits in this city, the services that they would provide would bring us to a standstill. It would be an incredible, incredible loss to the city. So that was why the timing was changed. I would never, in the history of the City of San José, have I found any precedent for three-year funding for any program. I think this is bad policy to take one item and say, "Well, we're going to exclude that, we're going to put this at the front of the pack and let the rest do what they may." And I've been a huge proponent of crossing guards. But I'm not a huge proponent of making them the poster child of what should happen first outside the normal budget discussions. And then thirdly, how would this affect other funding opportunities with the nonprofits in reference to grants, matching funds, the various types of things that they could go after? I believe that was an extra component of the reason why it was shifted to an earlier time. Because then they lose opportunities that would afford them some funds on the state or the national level. I don't know why the grant cycle was originally changed. But it was -- the decision to keep the funding capacity at -- in an optimal level. So at this point, I could not disagree more. I obviously am in favor of helping and backing crossing guard programs. But I'm also in favor of helping the 70 nonprofit groups that are affected by this. This is a very, very serious item. And I do appreciate the reference made to Hobson's choice, which I believe is -- I think of Sophie's choice would be a good example of that, choose one child. It's almost impossible to do. So for that reason, I think it's bad policy. Two, I think it should be referred to Judy's group Healthy Neighborhood Venture Fund committee, because that's where the preponderance of knowledge is, that's what Judy worked so hard for the whole time she was chair of that group. It's the question of not only policy, I think, but of fairness. So --

>> Councilmember Constant: Mr. Mayor, if I could respond, the only part I agree with is the part that, it should be in budget cycle. That was stuck in the middle there but that was exactly what Councilmember Oliverio and I are asking for. The process was not changed by the council. It was a change that occurred without a lot of people on the council knowing about it. It was deviated from the budget cycle. And I have to also disagree with the fact that you've never seen this type funding before, because you can look at

HNVF and that's exactly where we got the idea. Because it has been done with HNVF in several off-the-top programs that are protected for multiple-year cycles. This is not something new that Councilmember Oliverio and I just dreamt up over a couple of beers one night. This is something the council has done in the past. It's been established. It's done with the children's health initiative. It's done with the homework centers. It's done with senior nutrition. This is something that has happened and I'm sorry if you haven't noticed that over the years. But it is an established process that we've had here. The problem is it's been taken out of our normal budget cycle which hasn't been done before and it's also committing money for two and three years in a time of serious economic uncertainty, when we don't know how we're going to balance this budget, and how we're going to balance a budget that we don't even know how bad it's going to be next year.

>> Mayor Reed: Okay. I know that Councilmember Oliverio, Councilmember Kalra want to speak to this. And I do have one card from the public, Clark Williams. We'll get to Clark in a minute. Councilmember Oliverio.

>> Councilmember Oliverio: In your absence last week, while you were in Washington, thank you for visiting the the capital, to do the good work of San José. But we did have a room full for the cross are guards. East side, west side, Santa Teresa, Willow Glen. We had five superintendents, and they told us that they recognize this is a tough economy and choices have to be made. And they realize first and foremost, safety of children in jeopardy of our traffic in San José. And they felt that the funding of crossing guards over HNVF was the choice to make during a critical, critical, terrible recession that we're in. We talked about this yesterday at the budget meetings for four hours. I didn't mention that the Dow and S&P are 50% of what they were a year ago. That consumer spending, we as consumers used to spend 6% over our income because our home equity, which has now reduced. That means much, much less sales tax or property tax revenue. Make sure we're protecting what 64% of the citizens said they wanted, the cross guards, 62% said you know what, I can live with not funding nonprofits but at the end we're only taking a portion of that question of the HNVF, tobacco money, taxpayer money and using it for the crossing guards. If it's not crossing guards and tobacco money then you know what it is, it is crossing guards and senior centers, crossing guards and hiring additional traffic officers, and maintenance money. The traffic guards we were able to choose, we had a room full of audience, the ones who are against this is the nonprofits. They provide an excellent service. San José did a great job last year but we have to make a choice. And if we can't make this decision how are we going to make the other ones, to settle the 65 million growing to 71 million budget deficit. So that's what we're asking. Let's make this part of the budget process. Let's also make the budget cycles align with our budget. So as things continue to decline on city revenues, we have the ability as the -- the fiduciary responsibility for our city, and those who believe that volunteers can handle it, we heard loud and clear from the parents, superintendents, principals and parents, were that paid crossing guards are what's best. Volunteers are outstanding but they are there to augment city staff but not replace them. Crossing guards are not pork. Crossing guards are probably the best service we provide without medical benefits. There is no urban city that does not provide crossing guards that he knows of, and we've been doing it since 1945. Thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. The intention of the memo that Councilmember Oliverio and I put out this afternoon, point 1 was to not disturb the HNVF budget process, which was already underway, has been underway, that the nonprofits have been hurriedly trying to keep up with and file their application paperwork for, and the City Manager's office has been processing. And the second item, and I think Councilmember Pyle mentioned some of the issues with the nonprofits in regards to state funding but also their budget cycle as well. Item 2, to return to council Councilmember Constant mentioned that's already been sent out to schools-cities collaborative. Let's get some that information back and come back with proposal or options as far as that's concerned. Item 3 is a report to the appropriate council committee regarding the way that city staff can reduce the \$900,000 in cost, to administer the HNVF program. Councilmember Constant also mentioned that part of that work's been done in a suggestion to move the HNVF to the General Fund, well, that's one option. But also look at other options as if the program remains as-is, how can we become more efficient in the way it's administered currently. And item 4, is something that I guess that Councilmember Constant in the discussion here today seems to be in agreement with, that the -- at least in terms of how we assess the crossing guard program that we assess it during the ordinary budgetary process. And it was our strong belief that we should look at it on an annual basis. I know last year Councilmember Pyle was a strong advocate and worked hard to ensure the funding was there for the crossing guard program. And a larger problem here is, what is happening in the

last couple of weeks and how we've gone about this process. Because yes, there was a room full of people but the reason -- part of the reason why that room full of people that there was a fear created that we are pitting nonprofits against crossing guards. I think that is an irresponsible way to go about that. There is a better way, a responsible manner. And part of what we want to do really is think about you know going through a budget process, think about how we can maintain the crossing guard program, see how we can incorporate volunteers as well, trained volunteers and do it in such a manner that allows everyone to have appropriate input and discuss the matter. Now in terms of changing the budget time line of the HNVF funding that is not in congruence with the ordinary budget process, that's something that can be looked into. But looking into it when a deadline for the applications is in two weeks, and we're at the -- we're approaching now our budgets cycle, I don't think that's an appropriate way to look at it. That's a very rushed way to look at it. You can say nonprofits that they may be pork but I'm not sure that's the case. The nonprofits leverage their money extremely well in this city. They have a time line what they're given and what they give. They have reliance what we give to them as well. October 28th as mentioned the background of the memo, Vice Mayor Chirco after months of discussions with the community, public meetings, committee meetings, in discussion with the nonprofit community, the city council approved the results based accountability model for HNVF, that would have been a perfect time for Councilmember Oliverio and constant to talk about that. Talking about it now is I think inappropriate and as the mayor has stated from the outset, we're talking about two separate things here and we're trying to commingle them into one. That's what's created this adversarial discussion where it doesn't have to be that way. We need to look at the crossing guards as assets to our community and look for ways to assure that we fund the acrossing guards this year as well as we did last year. Thank you.

>> Mayor Reed: Okay. I've got a question for staff and so does Councilmember Constant. First is, what difference does it make to the staff or the HNVF process if the staff registers are released on March 18th rather than March 2nd?

>> Mr. Mayor, Julie Edmonds Motta, assistant director, Parks, Recreation, and Neighborhood Services. Per the anticipated schedule we had anticipated publishing the schedules on March 2nd than would have led to a March 19th HNVF leadership committee meeting, and recommendations into the May 1st proposed budget. However, additional information, we have finished the staff review and our next step is a technical review. And we had challenges recruiting members and we've only recently completed that. And so our revised schedule, not based on any discussion we've had today but just in terms of our internal processing, we will now anticipate releasing the staff recommendations and the technical committee's recommendations on April 2nd. Which would keep us on the same time line in terms of incorporating it into the budget process. That would then be heard and considered by the HNVF leadership committee, chaired by Councilmember Chirco, on April 16th, and then would be incorporated into the proposed budget on May 1st.

>> Mayor Reed: Okay. If the council, on March 17th, decides to do something with some of the HNVF funding, increase it, decrease it, I don't know, it's up to the council, how will you adjust your staff recommendations and the work that you've done?

>> The recommendations themselves, we received 117 proposals over \$11 million in total. And right now, the allocation cap is \$3.5 million. We rank-order all \$11 million within the categories. And so therefore should you decide to change the line, if you will, by changing the funding allocation, that could be done very consistently with the staff recommendation. It's just the line would draw at a different place based on your total funding recommendation.

>> Mayor Reed: Seems to me we should take up all the issues on March 17th, when framing the budget, how much money to put in one category or another, that would be the kind of things we do in the budget process. And if you're not make recommendations until after that time then the council's hands aren't tied one way or the other. And then we can have that values discussion about where the money ought to go without having to be constrained by the calendar. But I don't think, having the discussion of should we take money from HNVF and using it on crossing guards is appropriate, before the budget process. Because these are great budget things. And we have a schedule. We have a process. And we could take them all up in that process. That's why we have that process. So we can have these debates. But I'm going to come back to Councilmember Constant, whether or not you think that if this is basically deferred a month in terms of a staff decision making process, whether that gives the council enough room to make the decisions?

>> Councilmember Constant: Well, I think it's clearly the intent of our second memo to get this in alignment with the budget process. So that it can be made in context. The question I have, and

Councilmember Kalra pointed out that maybe this discussion should have happened on October 21st, 2008, I've asked staff and I guess I'm going to ask again in case I didn't understand or didn't get the documentation, but I don't believe the council gave direction to move the cycle on October 21st. Because I've asked to see the council direction that led that and it hasn't been provided. And I've asked multiple times. And I've been told that it wasn't necessarily council direction. Yet I've got a colleague here that said you should have voiced that when the council gave direction. I was sitting on that dais in October and I was reading the reports and I need to know. Did we give the direction to move the cycle or not?

>> City Manager Figone: I'll ask the staff to respond. I guess what I know about this, it would be my assumption that the HNVF committee was empowered to drive their process. And I'd -- just looking at the staff to confirm that.

>> Thanks, Deb, yes, that's correct. First we were also working on prior council direction, which asked us to improve the HNVF contracting cycle as a whole and ensure that contract could be executed in the first week of July. And that first week of July for contract execution has driven the schedule back from that time frame in order to execute the contracts. Secondly, in the October document, the schedule itself is one of the rules or policies of order that was delegated to the healthy neighborhood leadership committee. It is this exact schedule we're working with now was brought forth in the winter, was approved by the committee, and we've been working on that schedule since that time.

>> Councilmember Constant: This is not how it's been explained to me previously. I would just like the documentation. Because I don't believe it was a conscious decision by the council to move a cycle, so significantly as to get it out of alignment with the budget cycle. So to me, getting funding, contract signed on July 1st, is not necessarily congruent with, let's move it so the decisions are made before the council has a chance to act and make a decision. Fairly logical in thinking, that maybe the process is going to be modified but it's still going to be within your budgetary decision making. I don't remember giving that budgetary decision making authority away. And if I am or if I've done that then I'm just asking, provide it to me. Show me what we did, when we did it, because I still have not seen that. And I think it's critically important that we get these things back in alignment. And let me just point out that our financial world today is a lot different than it was October 21st and the months that preceded that when these decisions were made. And we can't, in this economic environment, facing the challenges that we're facing, just say, we made a decision, we're going to live with it, no matter how bad it hurts. If we know we had more economic uncertain did I than we did six months ago, if we have a budget deficit considerably larger, may I remind you going into the November election, we thought if we won measures J and K we would have a \$22 million deficit. It's now \$65 million we just talked about the other day and I bet you in a couple of weeks from now it will be in the 80 million range. We can't drive down the road and say yeah, the world has changed, our budget has changed, but we're going to let the committee decide this, whether it bankrupts us or Knopf not. I think we have to be able to say, we have the ability to talk about this in a budget cycle, let's do that because we're talking about a two and three year commitment that's going to tie our hands for a long time.

>> Mayor Reed: Take some public testimony at this time. Clark Williams.

>> Yes, thank you, Mayor Reed. My name is Clark Williams. I'm a volunteer board member, Silicon Valley council of nonprofits. And Patricia Gardner who is the executive director of our organization, wasn't able to be here. So she wanted to make sure there was a representative from our organization here. We just wanted to thank the mayor for the support and understanding of the issue. And certainly we support the City's budget process and welcome an opportunity to be part of that. It is our position if there should be a discussion about crossing guards and other city programs and a separate discussion about Healthy Neighborhood Venture Fund funding but not as a combination, not connected to each other. So agenda item 10.3 we also want to request that all the communication that has been sent to the mayor regarding this issue be placed into the record. On the other idea, regarding the schedule of -- item, regarding the schedule of the Healthy Neighborhood Venture Fund scheduling, these are recommendations that are made and these recommendations, the schedule was altered in order to improve the contracting process. The nonprofits that received funding from this fund are in fact public-private partnerships between the city and the nonprofit sector and there's been a lot of work over the past few years between the Healthy Neighborhood Venture Fund committee as well as the recipient organization to improve that process, so there would be time for city staff to prepare scopes of work and contracts that could be achieved by July 1. If there is a change in scope, there is a change in those contracts. Again they're not scheduled to be executed until July the 1st.

>> Mayor Reed: I'm sorry, your two minutes is up.

>> Thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Just briefly, mayor. And Councilmember Constant, I certainly understand, I think we all understand the economic situation we're in. And I don't think any of us can speak enough about that. And that's certainly true. But I think that if the discussion has started there, it may have lent itself to more collaboration and discussion. That's not where the conversation started when it started up. It was more, take that money, give it to crossing guards. The main reason why Councilmember Liccardo and I wanted to put this memo out is that we certainly understand that the economic impact that has been incurred by us, the city and by taxpayers, and by all of us has been incurred even more so by the nonprofits that are serving our residents. That are serving our communities. It is not like they're out there serving residents of San Francisco, Oakland, they're there serving our community and leveraging these funds. These nonprofits, that they've gone through this process, is something that they know the timing of, they know their commitments and they know that we're going to try our best to make sure that whatever we're able to commit to them in terms of funds can get to them in a timely fashion. That being said, it does not stop us in talking about all these other issues at the proper time and through the budget process which is I think some of what we discussed. When I mentioned the October meeting, again I wasn't there. I wasn't on the council yet. You may know more about it than I do as far as what was presented to the council. But in look and studying on that issue and talking to Councilmember Liccardo about it I do believe that the determination of scheduling and the allocation plan and so forth, that is my belief, that that could have been an opportunity. I don't want to in any way say that you shouldn't have been, it is my belief that could have been an opportunity to raise that issue at that time and I can't speak to what -- what kind of direction the council has given in the past as to change that time line whether it was council direction or through committee. But I do think that it's important just to note, the premise of our recommendation is to make sure that we don't hurt these nonprofits and additionally we look at ways of making the administration of the money of the nonprofits more efficient and more cost-effective and that we look at ways to ensure that we can maintain our crossing guard program. Thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: I'd like to echo some of your sentiments as well. But to say that every program that we have is being scrutinized, every program. And the current status of the crossing guards at this time is it's being reviewed by management partners who may come up with ideas to make it more efficient, may not. There was a roomful of people from the education community who from their comments would give the impression that we were going to cut crossing guards. Now, I don't know how they could have gotten that message, except for that coming from the people that invited them.

>> Councilmember Oliverio: Actually, the neighborhood budget meeting where we brought in residents from across San José to make tradeoffs and choices, that was put on the table.

>> Councilmember Pyle: They heard that crossing guards were being cut?

>> Councilmember Oliverio: Yep, it was a card they could choose.

>> Councilmember Pyle: Option, not a fact.

>> Mayor Reed: Let's move this along.

>> Councilmember Pyle: The thing I'm very concerned about is royaling up the public, causing fear and alarm in the community when it is not justified. That, to me, is a moral responsibility that all of us bear.

>> Councilmember Constant: But you're making the assumption that we went to them and they didn't come to us, which I think is an improper assumption to make.

>> Councilmember Pyle: Glad to hear that.

>> Councilmember Constant: Is this management partners responsibility, this is the first I heard about.

>> City Manager Figone: We got the option to evaluate the crossing guard program, how to fund it. We brought that issue to the city-schools collaborative.

>> Councilmember Constant: It is the same as the city-schools collaborative that we've discussed, not something different?

>> Norberto Duenãs: That's correct, Councilmember Constant. So that we can look at efficiency, alternative models. And we would anticipate that that report would be coming back to you, to the Public Safety committee, in April.

>> Councilmember Constant: So again, making any of these decisions prior to having all of the information and getting this in alignment with the budget cycle I think is improper. So I'm not sure how you want to proceed from here.

>> Mayor Reed: Well, it seems to me that we don't have to do anything. If the committee isn't going to be releasing their recommendation until April 2nd, the council is going to have the month of March to make the fundamental decision deciding whether money should go from HNVF to something else in the ordinary course. So we're not up against the deadline like we thought we were with the March 2nd deadline so we have the time in March to do it. And each of these suggestions are things to do, are things that we should take up in the budget message and let the council make that decision on March 17th. All this is part of that process that we already have set up.

>> Councilmember Constant: I'm willing to go along with that as long as we are very clear from staff that it's not going to come out before we have this council discussion. Because that's really important. One of the things that troubles me is, I keep hearing from the nonprofit industry that we have to be made whole, we have to be kept whole, this entitlement mentality, when everywhere else in the community we are looking at 22% cuts. And if the council should decide during the budget process that HNVF, 22% of that should be diverted to core services just like every other department, gee, that number comes out to exactly the numbers of the crossing guards or any of the other number of services that are around the \$22 million mark. I just want to make sure the council has the ability to have that discussion and I'm hoping that the council will look at it and say if we're looking at everything we do to take cuts, whether it be 18% or 22% or 40% by then that we have to cut that we have to consider look at that same amount within HNVF to make sure we keep critical core Public Safety services whole.

>> Mayor Reed: City Attorney did you have something --

>> City Attorney Doyle: I was going to remind you that your first discussion on the budget will be March 10th. There will be a number of city council members that won't be present on March 17th. That is a housekeeping matter that you may want to address at this rules committee meeting or another rules committee meeting.

>> Mayor Reed: What is going to happen on March 17th.

>> City Attorney Doyle: I think you indicated that you were -- you have a number of them traveling to Washington, D.C.

>> Mayor Reed: Okay, take a note, City Manager, let's figure out the budget message cycle, if we don't have a quorum of the council, it polite be tough to dispose of it on the 17th. What's the meeting after the 17th? Is there a meeting the 24th? Okay, so even if we had to do it on the 24th, we still aren't up against this deadline of the HNVF thing, we still got a week in there.

>> City Manager Figone: Staff, we will not publish before the council has this discussion. That's in our control, correct?

>> Yes, absolutely.

>> Mayor Reed: Okay. I think we take no action at this time on these things, and I'll consider all the memos as part of the budget process and it can be discussed as part of the budget process, whether that's going to be March 17th or March 24th, I guess we'll have to figure that out. I mean, we'll just get the league of cities to change their date.

>> Councilmember Constant: Sure. We can just go back to our earlier action and unapprove everybody's travel. We'll all be here.

>> Mayor Reed: Okay, no action at this time?

>> Councilmember Pyle: No action at this time.

>> Councilmember Constant: Begrudgingly.

>> Mayor Reed: I think you solved the problem in terms of the schedule. All right, no action on those three items. Or two items plus amendment. That takes us to 10.5, the prevailing wage, liquidated damage waiver requests. City Attorney.

>> City Attorney Doyle: Yes, Mr. Mayor, members of the committee, we've prepared a memo. In December the Rules Committee, two individuals on behalf of the respective companies requested a waiver of liquidated damages that are assessed as part of our prevailing wage enforcement program. The -- these two individuals had done work on behalf of the redevelopment agency, the redevelopment funds were used as part of what's called an owner participation agreement or OPA. I believe each project was \$3 million of agency money. The -- under state law, prevailing wages required to be paid under our contracts, we have an enforcement of liquidated damages, in the event that their failure to submit certified payrolls to the agency, it's \$100 per day. And then in the event that prevailing wages are determined not to have been properly paid, it is three times that. This program was put in force in 2004, I believe. The council wanted to have a very strict enforcement mechanism to ensure that prevailing wages were paid. And so Nina Grayson who is responsible for administering the program is leery to talk about any

specifics. Tom Mertha from the general counsel's office is here to talk about the specifics as well. Otherwise, our recommendation is that consistent with what we've done both on city projects and agency projects, that we're just enforcing a contract. And if the council wants to consider revising the contract terms or looking at anything, it's done to refer to the entire council.

>> Mr. Mayor, Abby magnun, redevelopment agency. I want you to know that the two individuals are here, and would like to address the committee at the proper time.

>> Mayor Reed: Okay. One other request to speak from Josué Garcia. We have previously had discussion on these particular topics. The question today is whether or not -- I think your answer was we can't waive it under the existing ordinance there is no waiver.

>> City Attorney Doyle: That's correct.

>> Mayor Reed: The question is do we want to add a waiver? These could apply under that provision if the council decided to add it.

>> City Attorney Doyle: If the council wanted to so do it.

>> Mayor Reed: That's the question before us.

>> City Attorney Doyle: Right. We would later address the difficulty in enforcing that. That is whether we get there.

>> Mayor Reed: The question is whether or not we want to add a waiver to our public ordinance. Take the public comment. Mr. Fox do you want to go first and then Josué Garcia.

>> Mayor Reed and other members of the committee, I appreciate the time. I want to encourage you to allow this to go to the board and council to be heard. In this particular case that I'm referring to, there was a small subcontractor, a sprinkler contractor that did the work at that time building. Union contractor and paying wages as per his collective bargaining agreement. And he thought he was doing the right thing. And then -- and he was putting in the certified payrolls to the proper places each pay period and following all the rules. The committee or the group here, Nina's group discovered that at some point down the road on the job, he was paying a residential prevailing wage rate, and he was, and he felt when he got to the apartment part of the building, that he was paying the right prevailing wage rate. And it was pointed out to him, in the certified payroll, that he needed, on this building, because of its height, to pay a different rate. So there were apparently four employees involved and there was a matter of \$8,000 worth of pay. And he came down that day when he was notified and paid the four paychecks, the difference in the pay. It was a -- so we talk about prevailing wage. These are prevailing wage jobs. They're written in all the contracts that way, and everybody is aware. And these people were being paid. This pipe fitter was paying his employees a prevailing wage. He was just not paying the state's prevailing wage, apparently which is slightly higher than what his bargaining agreement is with his local union. So he came down and paid that. And the reason I'm here is, he is being charged \$25,000 in liquidated damages for making that mistake, if you will. This is entire contract on that job was probably no more than \$200,000.

>> Mayor Reed: Your time is up.

>> That's it, I'm sorry.

>> Mayor Reed: Josué Garcia.

>> Thank you, Mr. Mayor, committee members. I'm here to request that you not approve this waiver request. I'm representing the building and construction trade and the men and women we represent. I worked as a roofer many years and many of those years, or a few times within those years I worked as an undercover, construction worker immigrant looking for work. And I witnessed how contractors were wrong paying the prevailing wages. In fact the last contractor I worked for took probably \$5,000 from my paycheck and at the end, ended up, I had to do it. The contractors mention in this report, they knew about it, staff met with them, time and time and again. I think these two times. So they were knowledgeable about it. And we don't really recommend for you to do this. Because if you approve the waiver, you are going to get our workload, a truckload of contractors asking for waivers. And that will undermine the city staff and will undermine contractors and developers that are playing by the rules. And that will send the wrong message to the contracting community. Again, the contractors knew about it. And staff explained. Staff met with them and explained the rules. And they still didn't get it. So that's our request, is for you not to approve the waiver request. Thank you.

>> Mayor Reed: Thank you. Mr. Kotanski.

>> I don't know if I can get this all in in two minutes, but I'll try. I think this penalty is a little excessive. In my particular case, this happened between the redevelopment agency and the contractor. I personally did not know about this penalty or that there were really infractions until at the end of the project when I was expecting to get full payment and I found out \$100,000 was being held back. And somehow I think it

would be better if there was a way to advise the owner, whose name is on the contract, as the problem happens, so that he's aware of it and make sure it doesn't happen again. In my particular case, there are five companies that made an error. They didn't realize it, they did realize it, all I know is that everything that was done was made good. The problem I have is that it puts a major burden on these small contractors. In two of the five cases, I know that the penalty is worth more than the actual contract. I mean, they did everything in one month, built it, and so how do you tell them, well, you got to give back the money? And they did make good. I'm also saying that, in these times, when the economy is in so -- in such a bad way, it's even more difficult to sit down with these contractors and say, "hey, I'm sorry, but there's a whole \$100,000 that we have to take out of your contract." I don't think they can afford it, especially when I know they didn't make money on the project, I know we're struggling to make money on the contract. The money for this penalty just isn't there. I know it's not your responsibility to make it up for that reason but I think it's a reason at this point in time that it's something to look at. We entered this contract with the city. We did, I thought, a terrific job. We took seven homes and brought it together and making it to very nice retail and very nice office. We're 40% leased in a market that is really tough. And it makes the finance of the project very, very difficult. Today at lunch I was told --

>> Mayor Reed: Sorry, your two minutes is up. Thank you. That completes the public comments on this. I have a couple of questions. First, as I understand it, these are not penalties. They're liquidated damages.

>> That's correct.

>> Mayor Reed: And I know there are limits to what people can agree to in the form of liquidated damages. But they are agreed to by the makers of the contract.

>> City Attorney Doyle: That's correct. And they're separately initialed, so everybody understands the provisions that there would be liquidated damages assessed. The city council, back in 2004, insisted that we come up with a mechanism that show that we were strict going to enforce prevailing wages.

>> Mayor Reed: Did the council discuss penalty as opposed to liquidated damages?

>> City Attorney Doyle: No, it was -- this went through what was then the finance committee or whatever the predecessor committee to Public Safety. And it was discussed as what can we do to enforce it? And we came up with the concept of liquidated damages. Almost paralleling antitrust damages where treble damages would be -- make a statement that we're serious about enforcing the law.

>> Mayor Reed: Yes, but those are seen as penalties.

>> City Attorney Doyle: But they're not, they're damages.

>> Mayor Reed: So we're on the line between -- we are not doing penalties, these are liquidated damages, contractually agreed to, each side going into the deal, if you make the mistake it is three times the mistake or whatever it is. But if there are limitations on that? I heard somebody mention well, the damages are more than the contract. I don't think that's correct, maybe more than a profit on the contract, I'm not sure. But are there limits on how much we can extract in the form of liquidated damages? Are you concerned about you know, how it gets applied in some cases? Might put us over whatever line there is about how much we can --

>> City Attorney Doyle: There may be under certain cases. I think this is not inconsistent with what we've done in the past with other developers imposing the liquidated damages and enforcing the provisions. So you know, I can't speak hypothetically.

>> Mayor Reed: The theory is unconscionable?

>> City Attorney Doyle: The whole theory is, the damages are difficult to as taken. The parties agree up front to a certain amount. We have done those in the past with regards to delaying claims and in this case in enforcing damages.

>> Mayor Reed: I want to make sure that the ordinance is solid and if we are somehow over the line, whatever the line may be that we fix that.

>> City Attorney Doyle: It is not an ordinance. It is a contract provision that the council has directed us to put in all contracts, all construction contracts.

>> Mayor Reed: Okay, I just want to make sure we're doing the right thing and if we're over the line that we fix it. Councilmember Pyle.

>> Councilmember Pyle: Well, I agree with so much that has been said. First of all, you have a rule or you don't have a rule. If you make exceptions to the rule, you are constantly dealing with more exceptions. They tend to multiply. Nina, I was with that commission how many years ago? I know how painstakingly you worked with various contracts to make sure everyone was in compliance. I don't know if you wish to speak about that but I'm not sure of the trickle down and that seems to be maybe what we're

stuck on. We don't want to unnecessarily punish small companies but we have a rule that everyone abides by. So did you want to make a comment about that?

>> The only thing that I would say in regard to a couple of these contractors, is that unfortunately they weren't submitting on a timely basis. And in the one instance it all came in at one time. And obviously if you have a violation, that violation is going to go up very quickly. And then, thus, and the liquidated damage is going to go up significantly as well.

>> Mayor Reed: We got one comment about the owner not getting notice until way-late. How do you deal with making sure the other than is engaged in -- because the owner signs the contract, right? The contract is between us and the owner.

>> Correct. And the owner was notified, in fact the owner was notified that they hadn't submitted payroll. In a timely fashion.

>> Mayor Reed: Okay. I had back to the liquidated damages. If we have a contract contract for this building, we would have liquidated damages typically for delay. The contractor can't deliver the building in time. There is liquidated damages, a daily rate or something like that. What if it's not the fault of the contractor, what if one of his subs could not perform in time? It is not our fault.

>> City Attorney Doyle: It is not our fault. We have in this case the developer or our contract in that case would be with the general contractor, and let the subs, they work for the general. But it's the general contractor who is responsible and his offer her responsibility to oversee.

>> Mayor Reed: In the prevailing wage area, it doesn't matter whose fault it is, if the contractor makes the mistake, there is these liquidated damages. What if it's our fault?

>> If it's our fault, if we've identified a violation that isn't a violation, and we give the contractor ample opportunity to provide additional and relevant information, then I have the ability to rescind that violation, and therefore, the liquidated damage goes away, as well.

>> City Attorney Doyle: And the case you gave about delays, if it's the city's fall in causing the delay, there are no damages.

>> Mayor Reed: So if it was the city's fall in causing the breach, like we gave them the wrong number and they're relying on us, there wouldn't be a breach and they can't get liquidated damages.

>> I'll be honest with you here, we've assessed a violation when in fact it wasn't and we've quickly rescinded. It happens, it's human error.

>> Mayor Reed: Okay. Councilmember Constant did you have something?

>> Councilmember Constant: No, I think all my questions are answered in the memo.

>> Mr. Mayor, I may, in the redevelopment we let a lot of contracts. We strongly believe that prevailing wage should be honored the way it's intended. However, staff feels the rules are set so tightly, that in cases like these two cases, where honest mistake has been made, and the proper contractor has paid those individuals, there is no room for correction. We understand the council has made that direction to the staff, to follow those guidelines. But ask that perhaps we consider providing some avenues when there's honest mistake, if not malicious and has been remedied to the extent that everybody's been satisfied.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Brings up a point, if the moneys that were owed were paid, what were the damages?

>> I believe it's three times the amount of money that was owed, is that correct?

>> City Attorney Doyle: Again, that's the basis of a liquidated damages provision. At the time you sign the contract the parties can't as taken what those damages are. We have an attachment up from the contract which sets forth the language and it's essentially the importance of the city's goals in promoting prevailing wage and enforcing prevailing wage and the requirement that we have to enforce and the difficulties in you know going through that process. So I think the logic has been -- is apples, it's not a question of intent, it's not a question of fault. It's a question of whether or not there has been a violation of the contract, a breach of the contract and that triggers the damages. And that's the policy we've been following since 2004.

>> Mayor Reed: Well, the alternative is to say if you breach the contract, we incur damages, you've got to pay our damages. And then we have to prove what our damages are.

>> City Attorney Doyle: That's correct.

>> Mayor Reed: And then we argue about the amount of our damages and the whole reason to have liquidated damages is you don't have that argument. That number is fixed. And that's the basis to justify it. It's in lieu of proving actual damages and arguing and arbitrating about the actual damages.

>> City Attorney Doyle: And everybody knows about it up front. They initial the clause and it's disclosed.
>> You know the other thing is, we provide, just as due process, we provide, like I said, when we identify the violation, we allow the contractor or the owner or the prime contractor or the subcontractor, to provide additional information. So they have that opportunity. But once that's been exhausted, and the restitution has been paid, then I don't have any other choice per the policy to then issue the liquidated damages assessment.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Well, I guess my only -- I totally understand the contractual issues and the reason for the prevailing wage and all that. I guess my only thing that I'm looking at here, it's not like someone chose not to pay prevailing wage. It's like he chose the wrong chart, the wrong prevailing wage to choose. Can you clarify for me? I got lost in the residential versus so many stories.

>> This always gets very interesting. In this particular case, in the St. Claire building project, it is not a residential project. Under the labor code, it's a four-story building, that has residential units, that's it. This building it exceeds the four stories. Mr. Fox and I had a discussion about that. I went to the Department of Industrial relations and got verification that it's not a residential project. I -- the City of San José could not issue residential rates for this project. It was commercial rates. The commercial rates were provided to the general contractor.

>> Councilmember Constant: So I guess to avoid confusion in the future, is there a reason we don't specify which prevailing rate in the contract, or did we, and it was just misread?

>> Well, the wage index is not specified in the contracts. Because in-d you know, the contract may have been executed two years ago. And construction doesn't start until -- and the wage rates are established by their advertisement date. So that's what --

>> Councilmember Constant: The rate, but I'm talking about the classification. So in other words, this project qualifies for commercial, industrial, whatever the terminology is, versus this project is residential classification?

>> Well, in the standard practice for our office, and what was done on this project, the St. Claire project in particular, is that the letter that went to the general contractor and that was copied to the owner of the building, specifically stated, we provide them with the wage index that is applicable for the project. And specifically, it was noted, no residential rates could be used. There is no way --

>> Councilmember Constant: That is exactly what I was getting at.

>> There is no way -- we issue the rates.

>> Councilmember Constant: Okay, I guess that's the part I missed, and I wanted to hear. We did inform which rates were applicable.

>> Yes.

>> Councilmember Constant: We did everything we should have done to make sure that they knew.

>> Yes.

>> Councilmember Constant: Okay, I guess I didn't ask it clearly, I'm not sorry, but we got there.

>> Mayor Reed: Anything else on this? There's actually I guess two requests, was to approve a waiver on both of these, and then the other issue is whether or not to change the ordinance. And ultimately that's a decision by the council whether or not to change the ordinance. How do we as the Rules and Open Government Committee deal with this?

>> City Attorney Doyle: I think on both, if the committee wants to make a recommendation, it should refer to council, either to look at a possible waiver, and/or changing the provision or coming up with alternative language. So you can refer to -- if it's the latter item you can refer to staff to come back to council and agendize at a future council date proposals to look at that might, I won't say mitigate, but at least be an alternative to the current language.

>> Mayor Reed: So if we want to recommend no waiver, no change in the ordinance, that still needs to go to the council, ultimately --

>> City Attorney Doyle: Actually, no action, note and file or let the council know as part of your report that that's the recommendation of the committee.

>> Mayor Reed: So if it's no action then we don't submit a council agenda except a report-out of this committee.

>> Mr. Mayor, one recommendation is perhaps if it's referred to the full council, perhaps a provision can be made that if there is a contest, and the council would hear it, to make a determination, whether or not they would want to waive the penalties. Similar to how it is done with the alcohol sales with Planning Commission, that they have sometimes automatically have to deny it and then it comes to the council.

>> Mayor Reed: Anything else? Will you make a motion? The motion for no action? No action. Okay, that's the motion, to take no action on these items. All in favor? [ayes]

>> Mayor Reed: Opposed? None opposed. Let me say that this is in the category of a deal is a deal. And sometimes the results are not exactly what people think might happen but it is agreed to in the contract. And it's a lot easier than trying to prove damages. I think the ordinance should stay -- or the practice should stay as it is. That concludes that item, then. Taking us to section 11. 11.1 is, request to set a specialty meeting of the Community and Economic Development committee, regarding the City's competition policy. The recommendation is March 12th from 9 to 12 and a verbal report from the City Manager on the March 17th council agenda. Councilmember Constant.

>> Councilmember Constant: I was wondering, since we know a few of us are going to be gone that week, that we could make it the following week. The report-out, is that okay Councilmember Pyle?

>> Councilmember Pyle: That would be fine.

>> Councilmember Constant: I'd make that motion, changing the date to the 24th instead of the 17th.

>> Mayor Reed: Okay.

>> Councilmember Pyle: I don't have any problem with that.

>> Mayor Reed: And the committee chair is here to defend the March 12th committee date. So the motion is to set a special meeting March 12th, 9:00 to 12:00 and have the verbal report out by the City Manager on the March 24th agenda. I don't have any cards on this. I guess nobody's going to speak on it. All in favor? Opposed? None opposed, that's approved. Taking us to open government initiatives, next item. Sunshine Reform Task Force. We have recommendations regarding public records, police statistical reports. Tom Manheim.

>> Tom Manheim: Mr. Mayor, thank you. If I could very quickly introduce this because I know we're running late. We did have to change the schedule around briefly and I just wanted to note that to the extent we can finish this item today, it would be helpful. The police chief will be unavailable because of some other commitments for the next three weeks. So we are hoping we can get through this. I also understand there are several people who do want -- who are here to speak on this issue. But I will turn it over briefly to the chief, and to captain Kirby. And I think they've tried to make their presentation, given the time as concise as possible.

>> Mayor Reed: Okay, chief. Captain.

>> Mayor and council if I could indulge you for just a moment. With the slide that we've presented here, this is a continuation of a discussion we've had on public records and then this last caveat, dealing with statistical reports. And if I can just draw you back into a previous discussion we've had, is we are talking about two major blocks of statistical reporting. One is called a vehicle demographics report, where we tabulate the amount of vehicle stops we do in correlation with what race we stop, if we made a search of that vehicle, if we made an arrest of that vehicle, that's some of the data that we report. The Sunshine Reform Task Force that is asked us to expand that report to include pedestrian contacts. So any time the police department makes a stop of an individual, we ask a series of questions. We may do what we call the police department pat-search you for weapons because of the conditions we're at in the city, the type of issue we're responding to, we need to touch you to see if you are harboring a weapon or not. Whatever the conclusion of that pedestrian contact we were to fill out a statistical document on that, too. So that's expanding the existing report. The other report that was mentioned was the use of force report, that the Chief of Police started as an outcrop of giving information related to when we first introduced tasers, if you can remember back, we had no comparative benchmark to say in an arrest situation when we were using a taser or physical force or so forth, so on. And actually it proved to be beneficial for us at that time because the assumption was made by the public that the police department was resulting to the use of a taser in the instant contact with the public. That report proved that to be absolutely negative. That in 70% of the cases the actual force that was used for the officer to control the combative situation, was hand force, you followed by the use of a baton, use of OC spray and fourthly use of a taser. The report proved that out. What they're asking for is to have those reports what we did on a resource available basis, to be honest with you, except in the use of force report, the chief chose to do that report. The vehicle report has not been forthcoming because we've been moving resources around. They're asking that report be done on a quarterly basis. We've done some projections as of the amount of CAD system when you collude conclude that then you give a disposition as to your activity. That's not always the case, on pedestrian stops. Pedestrian stops, you don't always notify dispatch that you're out on a particular contact. Because of the free wheeling nature and activity of the police department, is to make contacts of the multitude of people and do a variety of things. The other thing that is problematic about the pedestrian stop is that

when we make a stop on one vehicle, it's basically one event. We make a comparative stop on a pedestrian, we may stop a group of pedestrians. That means that the police officer has to make a statistical report on every person that was in that group whether there was contact, actions, questions asked because that's the simple definition that they asked us to do. If we ask questions we are to write a statistical report. It boils down to this, resources, one, and the validity, two. The following reports that came years afterwards, validated the same information time after time. Same with the vehicle study, the areas that we are stopping people of their ethnicity are in direct correlation with the ethnicity of the area we're doing the vehicle stop. We barely have the staff to do this on an annual basis or once every two years. So those are some of the issues in the request for these reports to be put in a mandated process that, for years to come, that we would be relegated to providing these reports, whether they may or may not be the best report to the council indicative of police activity. So we find a problem in that, that it does not allow us a flexibility to come up with other types of reporting methods or to report to you, the council, the validity of this information, where they don't show substantive changes for the activities we've shown year after year.

>> Rob Davis: Just to follow up on that mayor and council, one of the things we found also that there were a number of other major cities that were doing these studies. We were the first to do it voluntarily in 1999. Most have found what has been learned from those studies has been learned and to the extent that there's more information that's extrapolated out of that they're really not finding that, at least in terms of the analysis done by the police departments. Again, most cities no longer do them, for example, San Diego no longer does them, this type of thing. We understand why the requests are coming from the community, we can understand those issues and that's the reasons why myself and maybe four or five other chiefs of major companies have teamed up with researchers from major academic institutions and we're discussing this major issue, that's why I'm going to be gone next week, is to determine what types of reports, what value has there been or could there be in continuing on these types of reports. It is a question that still exists in law enforcement. These studies we have learned a lot from them but have not learned a lot more from them in the last seven years. What you're hearing the captain say is from the amount of time and effort that comes out of these, we're getting very little return.

>> Mayor Reed: We had a council referral as part of our budget process. I forget which cycle or which year, asking the department to analyze all of the reports that you were doing in your capacity to do the reports and the cost of doing those reports, so that we could make budget decisions about how much resources to put into that. And this is an additional request, for additional reports open ton of what it is you are already look at doing, is that correct?

>> Yes.

>> Yes.

>> Mayor Reed: I do have some requests from the public. We have some members of the Sunshine Reform Task Force here. And we'll let them talk to us for a while. Bert Robinson, Bob Brownstein and Schuyler forest.

>> Bob Brownstein: Mayor Reed, members of the committee. I'd like to do a couple of things. First of all, there was a reason why this request for specific information was brought forth by the Sunshine Reform Task Force. There are significant members of the community that feel that the police department is not treating them in a fair and appropriate way. They may be wrong. They may be right. But rather than have endless and continuing distress and divisiveness, one way to try and make progress on the issue is to generate data. And that was what we're trying to do in this recommendation. And we're trying to generate information in a way that has none of the privacy concerns that are associated with making police reports open, and has none of the threat to investigative processes that are involved in making actual police reports open. This is simply aggregate data with nobody's name attached to it. It is, I think, probably the best way to make progress regarding these community concerns. Is the set of data that we asked for the ultimate and only set? Should there be flexibility? Nobody, I think, on the task force and certainly not I would suggest that this be in concrete. These recommendations don't come from mount Sinai. If there are better ways or changes over time that are necessary, I think the community is open to that. But they would like that discussion to be in the sunshine. It should be done with the community here, in public meetings, and not by members of the police department with unnamed accusations someplace else that we can't find out. In terms of the report that's before you today, I think it's perfectly appropriate for the department to say there are resource issues here. This report came out in June of 2008, this is eight months later, we don't have a single budget analysis, we don't have a single number, we don't have anything we can go on to try and make any kind of judgment as to the extent of the problem. I would

suggest at the least that the department were to say, here is the stuff that we could do cheapest in terms of our current manual system, perhaps the use of force reports, here is the next stage, most expensive, here is the most expensive stuff, pedestrian stops, and some things require more automated systems and put a price tag on that. And then the community and the council can make some kind of sense about how fast we can get to the final goals that we want to achieve in terms of maximizing credibility in the community and also minimizing difficulties for the department. Finally, my last comment and I suppose it's a personal prejudice, I think we can get some of this analytical work done, without bringing in another high priced, possibly overpriced consultant into the city. We have people that know statistics. There are people in the nonprofit community who know statistics. There are people in San Jose State who know statistics. I think we can do it without writing a big check. Thank you.

>> Mayor Reed: Bert Robinson.

>> Bert Robinson: I think there are just two points I'd like to make that Bob didn't already make more eloquently than I would have made them so, let me just mention those. I understand in the chief's remarks the frustration that he and other people might feel with the reports as they've been done so far as an analytical tool. The thing I think that's important to remember is that these sorts of reports are not only an analytical tool for the police department to understand the statistical breakdown of its own actions. These reports are also symbolic of regular accountability to the residents of San José. If you do the report over and over and over again, and you look at it and you say well, we're not seeing a lot of change in the numbers. I understand that you feel like, gosh, then we should stop doing the report. But what I would say is, doing that report over and over and over, and showing these numbers to the public, shows the numbers that the City of San José believes it owes its residents accountability in the impact of its policing. One other point I'd like to make is, I would agree, and I think Bob referenced this, as well, that our proposal on logging and analyzing pedestrian stops would be a new undertaking for the police department. The task force, however, was unconvinced that our recommendation to produce reports quarterly on force response and vehicle stops was a significant increase in workload over the production of those reports on an annual basis. The reason for that is that the issues of inputting and verifying the data that the department collects on force response and vehicle stops are issues that are going to exist regardless of the frequency of the report. If all the data is being reviewed then it all must be input regardless whether the report is issued once a year or more than once. There might be some incremental increase if the department were to conduct extensive analyses of these reports on a quarterly basis but that was not our recommendation. Concerns about racial profiling have not gone away locally or nationally since the department produced its first vehicle stop report. You need to look at the recent public drunkenness controversy. Only when the report would have the opposite result. Thank you.

>> Mayor Reed: Schuyler forest.

>> This is ultimately about two issues. One, whether or not we're going to have better and more effective policing by having a community that trusts the police department. And two, whether or not we have a council who is actually committed to transparency and accountability. We have heard time and time again members of the community who say they don't turf the police department. How can you sit here and say that, in an effort to have transparency, that you want to give the community less than they have now. The task's recommendations are not as much as we have now and we strongly admit that this is something you send to the full council. Thank you.

>> Mayor Reed: Anybody else want to speak on this? Mr. Wall.

>> The testimony over the past year from the Sunshine Reform Task Force. I'm quite concerned how lobbyists and special interest corporation groups can sit on this task force and then dictate that they know what the community speaks and wants. I, for one, think the San José police do an outstanding job and are upfront with everything that they do. And I'm the only one here that gives testimony as a retired person. A retired citizen in the twilight of his years, to see this mockery of these people who claim that they represent the community. They only represent special interest and corporate entities. Thank you.

>> Mayor Reed: Anybody else? Okay. I had a couple of questions. First for any of the task force representatives that want to answer it, let's just talk about the car stops report which I've seen before so I'm familiar with it. What is the added value that you see of doing it quarterly, rather than annually or biennially?

>> Bert Robinson: At this point, I'm not sure the department is even doing it annually, I guess every two years.

>> Mayor Reed: Whatever the frequency is now--

>> Bert Robinson: Doesn't the entire population of San José turn over every five years?

>> Mayor Reed: There is certainly merit to the fact that population shifts over time. I remember that report and other reports as, you see the second report, and you know, the numbers are all within this really narrow band of up and down, and if you do it quarterly, you're still working within a narrow band range. What do you do with that quarterly report, where do you get value out of it?

>> Bert Robinson: I don't think, and other people can help me here, I don't think that the suggestion from the task force was that this is something that needs to be sort of fully analyzed and presented to the council with a big dog and pony show on a quarterly basis. It's just a philosophy of making the numbers regularly available to people. And a belief that the verifying of the data, if it were done on a rolling basis, would not make that an additional burden on the department. Given the fact that the vehicle stop report hasn't been done since 2004, I would say that even annually, I think what you're suggesting and maybe not, would be a substantive improvement on the current situation.

>> Mayor Reed: What I'm trying to say is, what do we get out of this? Okay, we got a report, we got this data, what does it tell us and when do we do? And that what-to-do part is sort of the mystery in all of these data. Whether it's ethnic data, use of force or car stops, then what?

>> Bob Brownstein: Well, you raise two questions, mayor. One is why quarterly? The only quantitative information you get, why doing it quarterly, if there are significant changes in the way the police department is functioning, and they're changes that are contrary to the way that the city and the community would want the department to function. You find that out right away. And can take corrective action more swiftly. My own personal view, it's quantitative judgment is that community requests for the frequency of reporting is directly related to the sense in which people feel comfortable with the fact that the department is committed to reporting, and doing this on a routine and regular understandable basis, and the more people feel comfortable with that the less they feel driven to want reports more frequently. The idea of more frequent reporting didn't come from members of the task force directly. It came from the people in the community who rightly or wrongly feel the department has been resistant to taking ongoing regular data available. Now, the second question you asked, mayor, was well, what do you do with the data? Well, you look at the data and see whether it suggests something that seems difficult to explain, in terms of the demographics of the community, and the kinds of populations that are out there. Now, something that's difficult to explain can -- perhaps can be explained. But if the data shows something that you want more information about, that is, some ethnic group is being disproportionately arrested or disproportionately stopped, it's very likely the members of the group also have the question about, we'd like an explanation for this. And when you get the information and it's not subjective but it is quantitative, then everybody can say, it's not somebody complaining about the fact that he got pulled over and nobody likes to be. But there's a real objective phenomenon going on. Let's see if there's an explanation. If there is an explanation, you know, my thinking is, that people are willing and open to listen to that. And say okay, what is the -- there's a reason for this. Here it is. If there is no explanation that's compatible with the values of the community then we may want and try and deal with the situation through changes in police practices or changes in training or what have you. But that's the reason you want this data.

>> Mayor Reed: Okay. Do you have something?

>> Councilmember Constant: Well, I just wanted to kind of bring us back to the budget discussion. Because I know that the chief addresses it in his memo. We're looking at reducing services throughout the city. And if I'm reading this right, we need four to six additional full time crime analysts to create these type of reports. That means two less officers on the street in a department that's already short 400, 500 officers. Or to pick on a topic we haven't discussed recently, we could probably crosswalk the city, have crossing guards at every one of those intersections. Sorry Nancy I have to throw that in every time. But to be talking about something like this again outside of the budget cycle is difficult. We have all of the sunshine items that I know we've -- I've had a lot of talks with the clerk about and other folks that we have all these new mandates but we're getting less and less money. We're going to have to figure out which ones give us the most bang for the buck and how we're going to implement and pay for them. And I guess if the chief were telling me today, I can produce a CAD report, and hand it to someone, a few key strokes, and we can do that quarterly, that would be a different discussion. I'd definitely be leaning more towards doing something like that, versus seeing something where we're talking four to six bodies full time to continually compile resources, and officers that could spend 15 or 20 minutes filling out sheets of paper instead of going on to the next case. And that's where my worry is. And I think the chief's recommendation of waiting to see how severely we impact our services and what we force the police department to take, is an important thing to do. And I had a question on item B, chief. Talking about going

out for a consultant on the statistical analysis. Yesterday on the budget one of the things that Sharon Erickson mentioned was, the potential of having our City Auditor's office bid on contracts for work that we're having others to do, to keep this in-house, did you talk to the City Auditor's office to see if they have the capacity, if they don't have it, what's the reason we have to go out?

>> Rob Davis: I appreciate the questions very much. And let me also perhaps lead into this by saying I clearly understand the comments that have been made here and the desires from members of the community perhaps to get access to this information. But you're absolutely right, councilman. We're looking at a staff that's been reduced by 70 civilian officers every year. Every single month I get a notice saying we're late in the response to the state on the crime information statistics we have to provide to the Department of Justice. So on an ongoing basis we're trying to juggle the resources we have to meet the expectations that are necessary, not only the mandate of law such as the Department of Justice statistics but the main focus of our crime analysis division is to feed information to the justice department so we know where there are crime trends to allocate the resources in our department to combat crime in the community. Believe me, we understand police statistics is a treasuretrophy, at the end of the day we're simply saying, how do we prioritize all of this? Believe me, I advocated for doing these studies in 1999. I spent three years doing this. I saw the value of doing it at the time. But just like other major cities across this country that are in these tight economic times and trying to allocate the resources appropriately, when you see diminishing returns on your investment you have to stop and say, what is in the best interest of the community? One other comment. It's not as simple as saying, we'll crunch these numbers and post them on a Website or something. We've tried that in the past. These are sensitive pieces of information and you cannot just throw this type of information out in the community without some type of analysis. Because I guarantee you the police department will field questions immediately when that information goes up online. When we've done that in the past we just printed information and not putting analysis, there was criticism because we weren't explaining what the numbers meant. We're simply saying this, I think there's value to get third party look at this, because you get objective look at the data. I know how busy the auditor is just trying to do what she's doing the impact the issues within the city. If we are going to go forward and continue to do this when other major cities aren't, we need to consider having the third party objective group look at that time data so it doesn't look like we're trying as a police department to spin these statistics. Believe me if we had a lot of people, if we had a staff that would allow us to do this type of stuff there's no internal resistance we have to sharing this information. Which is why we put online as much crime statistics as we can. We're not trying to not share information. We're simply in a situation where we're balancing our resources and trying to invest them wisely to get a return on our investment for whatever it is the community is expecting us to do.

>> Councilmember Constant: Thanks. And I just want to highlight the staffing issue. Because recently I called the police department just to ask a question, and it was in the investigative unit. A sergeant was spending his day answering phones because there wasn't civilian staff to answer phones. We had a highly paid highly trained detective sergeant answering phones because we don't have that covered. And to look at creating more administrative work when we can't keep our officers on the street or out in the field as detectives investigating the crimes, I think we really have to put a priority on that. Hopefully at some point we're going to give you the staff, Rob, so can you get those 4 or 500 officers you need on the street and the civilian personnel to do the job. And once we do that I'd be more than willing and a lot more comfortable coming back adding to your work.

>> Mayor Reed: Bob, do you have something to add?

>> Bob Brownstein: Earlier I'd commented that the department hadn't generated any quantitative data, I was wrong, they have, through an oversight, that information wasn't made available to the public. Otherwise I wouldn't have said they hadn't don't any quantitative data.

>> Mayor Reed: I'm interested in look at all the reports that the department does, really, we're only talking about vehicle stop and pedestrian demographic study. I know you come to council for other things. I think we have to look at all the reporting that's done by your department and decide how this fits in with the amount of money that we've got to spend and maybe some of those other reports that you're doing now aren't as important as these. I don't know what captain Kirby spends his time doing but we think of new things for him to do all the time. So I know there are other reports that get done in addition to the ones that we're talking about. So for example, I don't know how long it took you to compile all the information on the 647 arrests that you've done. That was a new work project. And and I don't know how that compares to the force response data, how long that takes to put together, and how long it takes to redact the reports that come out. I think council should look at that and say, we only have so much money

to spend and these are the most important reports and on that frequency. How long does it take to do a force response report or vehicle stop demographic study in terms of staffing, is that one full time equivalent to?

>> Rob Davis: More than. The issue we have in terms of that force report, these are not required by any public entity. When we very first instituted tasers, everybody with these devices we really need to make sure that we're tracking data and see if our training is matching what officers are in the field, et cetera. We voluntarily started tracking taser data. We said as staff, why are we doing it with just tasers, the same thing can be informative. We do not have a records management system. What is readily entailed when we've expanded this use of force report, when an officer uses force at any given time by his day, he is required to fill out an 8.5 by 11 piece of paper. In regular intervals officers have to sit down and go through that manually and begin to compile the data. It is all done manually. Remember this is at the same time as, especially when we were doing these reports that we were asked to do a revamping of the internal affairs process, which literally took hundreds of hundreds of hours, to do that project. In terms of exactly how many full time employees at any given moment are working on the use of force issue I'll let Gary speak to that and talk about the hundreds of hours on those reports.

>> The first day the officer is reporting out then the second stage we're compiling the data and then we move it into the various areas for analysis. And that analysis will have to be used and compared against statistical data for all other activity that's occurring in the city all of their arrests, all of their types of population groups and so the type people that are pulled away from normal analyses that would be doing that same type of pattern analysis for us to identify crimes and trends, that's the people that are deviated away. If I could probably talk about the more complicated one, that at first blush would seem to be the most simple one, which would be the vehicle demographic stop. It was done based on a CAD report, electronic on and off the clock report so to speak. CAD demographics are not designed for these type of reports. The industry standard has not evolved for public records act, they are coming in the forefront for that. You should know that the CAD system that we got has a users group that immediacy annually worldwide. Now our CAD system does not get out information manually. What that does is a computer programmer has to write a program, extract the data, reinstitute it so it's in readable form and then give it to a crime analyst to then match that up with other data that she or he has to put everything in the appropriate category. To make sure that there is no deviation in error for the information that we're trying to present. That's where the third party analysis comes in that would validate the analysis for somebody else to compile the meaning of the that information. So as an ongoing basis, a programmer who is very expensive and you know our I.T. department does not have an abundance of I.T. either, just to compile data, something that they don't have time for and that is a labor intense process of sitting down, writing a program and analyzing it out of a machine. Once that is done we actually write the report. Trying to do as much analysis and comparison so if the chief is asked questions, he will have enough data to anticipate the questions of the report. That is two or three people writing, researching, each report if we do it on an annual basis could be two to three weeks, each person, five to six people compiling that data and then rewriting it and reviewing it because we send it over to the City Hall, Deanna Santana will review it, there are a few more questions, can you put more data into it, we know we'll get questions in there. It is quite an involved process.

>> Mayor Reed: How with an RMS system change that process?

>> The records management system would not require the programmer to write programs to extract data if you wanted on the fly, to extract data. Simple device, coordinated into a data retrieval information. When they dock their device at the end of the evening we have all that relative data to make an analysis, area stops, type of enforcement activity, what type of group that enforcement was on, so forth, so on. One you think you're writing citations, all you need is the penalty, the code so can you get the fees for the fines. This system has been designed because of the need for analytical data to prevent accidents to see where the enforcement areas are, so forth, so on.

>> Mayor Reed: Dan, another member task force.

>> Dan Pulcrano: I'm Dan Pulcrano. Vice chair of the Sunshine Reform Task Force. The question is how much sunshine can we afford and how do we do it? I think if we have to at every step of this process, we discuss the cost issues as a task force and in various public hearings, now it's being discussed at Rules and then there's going to be a budgeting process for the city as a whole, when the ordinance is passed, I think that the most efficient thing might just be to pass the ordinance, let's get it to council, because obviously we all want to see this process achieve some closure, and then deal with these kinds of issues in the budgeting process. Obviously, there's going to be some tradeoffs that are going to have to be

made. Obviously, everything on the list may or may not be funded. But I think the appropriate time to discuss the budgetary issues would be at the budgeting stage, and not scale back the ordinance, and say, because we think we won't be able to afford this ever, that we need to cut back on what we expect out of a sunshine ordinance and thereby pass a lesser sunshine ordinance than they have in other cities. So clearly, I think the police department needs a report management system. The city needs electronic document management. There is going to have to be at some point capital investment made in the City of San José's I.T. infrastructure to bring it up to speed with the level of I.T. infrastructure that an organization of this size needs. I think the city is going to have to figure out how to fund those capital investments. But I don't think we should sit here and say, okay, we're going to scale back the ordinance because these are unfunded. I think we should pass the ordinance, get it to council, get this thing done, the City of San José is expecting a sunshine ordinance to be passed and then let's figure out the budget issues. Thank you.

>> Mayor Reed: Thanks. Pete.

>> Councilmember Constant: Well, I think that I would like to support the chief's memo with the addition of making sure that before we take action, we get the report on reports, as well, all the reports, so that we're seeing -- I hate to throw another report at you but we've already thrown that at you. But a report of reports so we can see it in totality. I'd like to make that motion and then I'd like to make a comment.

>> Councilmember Pyle: You're talking about a yearly report?

>> Councilmember Constant: I'm talking about the report from the chief. My next question I guess to the City Manager is I understand what Dan was just saying about passing the ordinance and then figuring out when and which we're going to fund. But what if we pass the ordinance which in fact becomes an unfunded mandate, and we don't generally get down to that detail level telling the chief you need to spend your money on this part, this part, and this part of the ordinance but not this part, and this part of the ordinance? How would we accomplish that?

>> City Attorney Doyle: Well, I think absent direction from the council, the administration would have to try to find a way to cover it. But the council could always, through the budget process, or some other vehicle, suspended operations of some provisions, through other reason, budgetary or otherwise. So there is a way that could be structured. It's unique, we really haven't done it that way but there is a way to do it.

>> Councilmember Constant: I would want to make sure we're very clear on that. I wouldn't want to pass the ordinance and not have a method that you just described and have our police chief handcuffed, so to speak, no pun intended, to have to do this report because it's mandated. It's in your municipal code, you need to do it. When we're looking at funding these things, I want the chief be able to tell me, we're going to give you items 1, 2 and 3, but that means no stand program or no C 2 program, whatever it's called, no neighborhood watch, no crossing guards, whatever the case may be. We're going to get rid of a traffic unit to do it. I want to be able to know what the opportunity costs. Because I fear they're going to be great and I fear we've already taxed our police department very heavily in the fact that we're not providing them the people-power to do the enforcement on the street, the investigation that follows, and have the civilian staff to keep up with everything they need to keep up with.

>> Mayor Reed: Let me suggest something a little bit differently. I think these reports have some value. The frequency is, I think, of some question, I certainly don't think quarterly you're going to find out that much more data than on an annual or biennial basis. I'm not prepared to give them up but I am interested in what do you do with them when you get them? Which to me is the most important question. I can look at the use of force reports and stop reports and there's some interesting questions on demographics. But I don't know what to do then. I'm really interested in the conversation that the chief is going to have with other big city chiefs. The fundamental question is are our police officers discriminating against our people on their race and ethnicity. That's the underlying question, from approximate people of our communities. On that question, you cannot answer that question on those reports. All those reports tell you is some place to go look for something further. I know that one of our committees is going to be taking up the issue of who's downtown at 1:00 a.m. on Saturday night so we have some demographic information to compare to other data. And so I -- what I'd like to do is sort of defer this decision until the chief has -- has been off to the conference, and have him come back and talk to us about what the other chiefs are thinking about how -- because we're trying to solve the problem. And we're not the only city with the problem. And if there's -- you know better knowledge about how to solve the problem, I think we ought to consider that. And if everybody sells, well, if you do these reports once a quarter, then you won't have any problems, then we'll do that once a quarter. But I doubt that's going to be the recommendation

of anybody. Because ultimately you have to take action based on the data. If we can defer it on -- chief, when will you be back?

>> Rob Davis: I will be back in two weeks, basically. The first day I'm back is March 11th.

>> Mayor Reed: March 11th.

>> Tom Manheim: Let me just point out, given your schedule we probably couldn't get it on that agenda because we'd have to distribute it and that would be the Thursday before. So we'd be looking at the 18th.

>> Rob Davis: March, April I'm good through that time period.

>> Mayor Reed: Okay, I'd just like to hear whatever work has been done by the chiefs on this topic. Before we decide what we need to do. Because let them solve the problem.

>> City Manager Figone: Mayor, would you be satisfied with a verbal report or would you like the chief to do a written report on this issue?

>> Mayor Reed: I think a continuation of this conversation basically, verbal report on the chief to see if there's anything learned. And if there's nothing learned and the chiefs haven't come up with an answer, then we'll act on the items that we have in front of us. But if there is going to be some sort of a national effort that would help us deal with some of these issues, I'd like to know about it.

>> Rob Davis: Mayor, one thing we will be doing is not just talk as chiefs but hear from some of the academicians. This is a leadership level, to try to figure out a better way to do it.

>> Councilmember Constant: So with that in mind, I'll rescind my motion and instead make a motion to defer, and instead of a specific date let's just say sometime late March, early April so we have a little bit of fluidity there. With the -- I think that's it for that motion.

>> Councilmember Pyle: And I'll second that.

>> Mayor Reed: I'm going to support that. Let me just say I started out my Air Force career, with some experience collecting the data, looking at the data, you never get the answer from the data, the data is the starting point. It tells you areas that you need to go are do further investigation. I understand the difficulty of trying to understand the information alone. What does it tell us, what do we do and that's the part we've been missing so far is what do we do beyond that. So that's really why I'm interested in hearing what the chief comes up with. I'm going to support the motion. All in favor? Opposed, none opposed, March sometime.

>> Councilmember Constant: Then additionally when we finally get to the implementation of the sunshine ordinance, if the city attorney's office could be prepared with how we might be able to decide what we're going to implement when, due to budgetary constraints.

>> City Attorney Doyle: Okay.

>> Mayor Reed: Okay. I think that concludes that item. What else is on the agenda? I think only open forum is left. Anybody wish to address the committee under open forum? No, okay, is there anything else staff that I've forgot? Okay, we're adjourned.