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>> Mayor Reed: I'd like to call the meeting to order. This is Rules and Open Government Committee meeting for October 7th, 2009. Any changes to our agenda order? No, okay. First item then is to review the October 13th final agenda. That one's easy. No meeting. Cancel that due to the holiday. October 20th, draft agenda. Anything on page 1?

>> City Attorney Doyle: Note 9:00 closed session.

>> Mayor Reed: 9:00 closed session on the 20th. Since we don't have a closed session on the 13th, correct?

>> City Attorney Doyle: No, we begin evaluations of council appointees.

>> Mayor Reed: Correct, we'll need a little extra time. Anything on 2 or 3? 4 or 5? 6 or 7?

>> Lee Price3: Mr. Mayor, if I might, on 3.8, the item on the Sunshine Reform Task Force recommendations, we've had a request from the public to ask if the committee would be willing to set this to be heard in the evening. I know you usually talk about time sensitive items maybe on the second go-round but since we are looking at this from an administrative draft standpoint, you might want to have that conversation today about whether or not you want ohear this in the evening. I just wanted to ask you to look at the evening agenda after the afternoon.

>> Mayor Reed: We'll come back and look at timing after we see the rest of the agenda then.

>> City Attorney Doyle: Just to go back on page 6, 3.7, this is coming out of the elections commission, there's proposed changes of the campaign finance regulations, that requires a two-thirds vote, so just to remove that. It's noted on the agenda, but just to highlight it.

>> Mayor Reed: Is that recommendation out?

>> City Attorney Doyle: That memo will be out tomorrow, it will be posted tomorrow.

>> Mayor Reed: Tomorrow being the 8th so that will be two weeks, at least two weeks, 12 days prior. Okay. Anything else on 6 or 7? 8 or 9? Item 4.3 on the 9th, the coordinated marketing effort, I think that's one that we could push out to the 27th. Just because it's not time-sensitive, another week won't make any difference and when you start looking at the items on the 20th, there's a lot. So I'd recommend we defer that one a week. Although we haven't seen the agenda for the 27th yet, so I don't know how lengthy it my be. Anything else on the 8th or the 9th? I'm sorry, page 8 or 9? Page 10 or 11? Item 6.3 C is a green events grants program to help set additional costs on setting green events in San JosÉ. Is that dependent upon the governor signing SB 402? If it is, we may need to make some adjustments. If he doesn't sign it, I guess we'll know within a week, and we can see if that works, or not, without that --

>> Ed Shikada: Also Mr. Mayor just for your information, staff is working on a supplemental based on a discussion at the transportation and environment committee, there was some discussion over additional offsetting costs or opportunities to reduce city special event costs. The supplemental will cover that.

>> Mayor Reed: Okay, anything else on 10 or 11?

>> Councilmember Constant: I just want to make sure Mr. Mayor, I have a note that on 8-1 we're only hearing A and B and the rest are being dropped or deferred. Is that the case?

>> Mayor Reed: No, I don't think that's necessarily the case. We have a supplemental staff memo recommending rescinding recommendations, but it's still on the agenda. And there are some recommendations that I'm going to be making of things we need to do. And I don't know how they fit in the A, B, C, D, lineup.

>> Councilmember Constant: Okay.

>> Mayor Reed: Anything else on 10 or 11? Yes.

>> A, B and C, straight to D, deleted?

>> Mayor Reed: No, nothing is deleted. I don't even have a C on mine. I got a B 3 B and B 3 C. Which levels of Bs and Cs are we talking about here? [simultaneous speech]

>> Ed Shikada: Supplemental that will replace the recommendations.

>> Mayor Reed: Okay. So the answer is, definitely maybe. [Laughter]

>> City Attorney Doyle: Mr. Mayor, I mean, with the staff recommendation, it's really only B, that's on the table. And all these other things are out with the initial memo. But I think the Rules Committee could either leave it as it is or just agendize item B. This is just an administrative draft and you can agendize the item as you want. I think there may be some request to make some modifications to title 16 as well, which goes a little bit further.

>> Mayor Reed: Well, as I understand the staff is recommending that we not take up the fees and charges on the 20th. But is saying that they want to bring something back in November after doing some additional work. Does that mean we take it off the agenda, or do we defer it from the 20th to some date in November, or does that matter for today's purposes?

>> City Attorney Doyle: Well, I think it's advising the council to take that action. The Rules Committee sets the agenda. So you can decide whether you want to forward it to the council to make the decision or defer it to a later date here. I mean, I don't want to make it any more complicated. It's just -- it is complicated when you say in A rescind it and then you list what you're asking to rescind.

>> Two and a half pages.

>> Mayor Reed: Well, I'm going to have some separate recommendations on this item. I want to keep it on the agenda because I'm responding to senator Florez and Senator Corbett's bills trying to take away our ability to regulate our card rooms and to let card rooms move out of the City of San José, and I think it's important to take that action which is not necessarily same as this action. And it doesn't deal with the fees and charges. So I don't want to take this off the agenda.

>> City Attorney Doyle: Okay.

>> Mayor Reed: But if staff is recommending that we not take action on these items, then the recommendation language here needs to be rewritten in some fashion before we get to it.

>> City Attorney Doyle: Right, and some of those changes may involve changes to title 16.

>> Mayor Reed: Right.

>> City Attorney Doyle: They may involve -- and that will be direction to staff to come back with any modifications. How we craft that we better work with your office.

>> Mayor Reed: Okay.

>> City Attorney Doyle: And we can get it before next Rules Committee.

>> Mayor Reed: So when would the amended --

>> City Attorney Doyle: We can leave this language on now, and then maybe the amended language next week.

>> Mayor Reed: Yes, next week we can look at amended language that sort of straightens out everything we need to do. Okay, because my memo will be out this week. Anything else on 10 or 11? 12 or 13? 14 or 15? Or

16? Have some requests for additions, some excused absences for Vice Mayor Chirco, due to illness, Councilmember Constant, retirement board meetings and a conference. Travel, and a request to add appeals hearing board interviews on the 20th which I think is probably not a really good time to try to do that, based on the rest of the agenda.

>> Lee Price: Yes, Mr. Mayor. We have nine applicants. We are still waiting to hear from two more council offices in terms of how many applicants we will actually be interviewing. At this point we know we'll have five. And originally, when we set this, we didn't realize the agenda would be so full for that day. The candidates do have this date tentatively on their calendars but it's totally up to you given everything else that you see. And we would ask that we try and hear it at a time certain for the benefit of the candidates, if you want to move it to another date we can communicate that with the applicants.

>> Mayor Reed: I think we should move it to another date, just looking at what else is on the agenda, or we are going to be doing this at a time-certain of midnight, which wouldn't be good for them, probably.

>> Lee Price: Probably another issue is, if I am recalling, Nora, correctly, don't we have one candidate who can't be here because of vacation? Okay. Strike that.

>> Mayor Reed: Councilmember.

>> Councilmember Constant: One of the things I wanted to ask, I thought we had moved these interviews to the more informal, separate meeting and this one got bumped back into a council meeting. I think we should do it on a different day and I think we should follow what we did with the other interview processes, I think it's a much better process. Also I want to bring up again the appeals hearing board the way we're doing the appointments is not in accordance with the council policy. I still feel that if we're out of sync with council poll we should get in sync with council policy, and change it, if need be, not continue to go down this road, that's my own personal opinion on that. I think that's something we need to get settled because I don't want to go down a road where we're not following guidelines.

>> Mayor Reed: City Clerk.

>> Lee Price: Mr. Mayor, if I could comment real briefly on that. Thank you, Councilmember Constant. We recognize that appeals hearing board has a process that's totally different than all the rest of them. As I was talking to the Vice Mayor the other day we hope to rectify that with the amendments to the council policies relative to boards and commissions which we're hoping to bring to you next month. So I hear you loud and clear.

>> Mayor Reed: Is there a time when we could set these for a meeting in here like we've done the other interviews, rather than doing it in the council chambers?

>> Lee Price: We have a study session set aside in November, Gloria, 13th -- I think it's Friday the 13th. Perhaps we could look at that. Or we could take another look at that time calendar and maybe come back next week with a recommendation to the Rules Committee about a special time in which we could do the interviews in a more informal process.

>> Mayor Reed: would it be disruptive and burdensome if we were to finish up in the chambers and move into here? I don't know what the staffing issues are about moving around in terms of the TV and everything.

>> Lee Price: Um -- well we generally have these rooms on hold during a council meeting anyway and should we need them for overflow purposes. So I'm looking to Dave, that and Tom Manheim, to see if maybe you can provide some input about whether or not we could move from a regular council meeting setting to this room to conduct interviews, that we could still televise?

>> Tom Manheim: If the question is about televising, I can give you an answer very quickly. I'll have to check on how quickly they could switch over.

>> Lee Price: Okay, that would be great.

>> Mayor Reed: That would give us an option of not having to have it at a special meeting, but at the tail end of a council meeting or something.

>> Councilmember Constant: The only comment that I would make, that particular Friday the 13th I won't be here and I'm the liaison to this particular commission. So if there's another date I would prefer that, but if not, I understand.

>> Lee Price: We can look for another date.

>> Mayor Reed: That was quick.

>> Tom Manheim: Thankfully they're close. Yeah, they can switch it, very easily, no problem.

>> Mayor Reed: Okay, so we could take a recess, come in here and finish up one of our other meetings, if we get a light agenda somewhere in the future, I don't know when that might be.

>> Lee Price: We will take a look at the 27th next week when we start building the administrative draft, and see if that will work. We'll come back to you next week and see if we can nail this down, thank you.

>> Mayor Reed: All right, so this will not go on the 20th.

>> Councilmember Constant: One more for the agency. There's a sheet, it's a joint item.

>> Mayor Reed: One more thing, we have a joint item, maybe 7.1, is that joint council/agency?

>> Mr. Mayor, members of the council, that's actually on the agency side, as the agenda shows we are also cancelled on the 13th, but we are recommending that the agency, meeting for the 20th, October 20th, also be cancelled. We had one item that the board had deferred from September 1st to October 20th. And that relates to the development agreement with CIM urban real estate. That agreement is not ready to go forward so we'd like to drop the item, cancel that meeting on the 20th and then bring the item back as soon as it's ready for signature. It's still being worked on.

>> Mayor Reed: Okay, so that would not go on the council agenda.

>> That's correct, or the agency.

>> Mayor Reed: All right, anything else to talk about on this agenda of the 20th? I'm concerned about the length of the agenda and whether or not there are some things that we ought to try to move off the agenda. There's a request to have the Sunshine Reform Task Force recommendations heard in the evening. We have one other request for evening that I saw in here, I forgot what it was. We have a relatively light land use agenda that evening.

>> Lee Price: Item 6.2 is to be heard in the evening, Mr. Mayor.

>> Mayor Reed: 6.2 is the special event venue -- U.S.-101 Mabury transportation development policy for the evening. So we could do the Sunshine Reform Task Force in the evening probably, comfortably. Would we get done with the afternoon agenda before we start the evening agenda? I think that's something we should certainly look at next week, at Rules, when we look at the 27th agenda. There's some other things we might want to move besides the one I just mentioned on a coordinated marketing effort. Get a feel for these. Any other items?

>> Councilmember Constant: I'll make a motion to approve with all those various amendments and additions.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion is to approve with the amendments and additions. All in favor, opposed, none opposed, those are approved. Redevelopment agency October 13th meeting has been cancelled. October 20th, you heard the staff recommendation, motion to cancel that meeting, is that --

>> That's correct.

>> Mayor Reed: Motion is -- we got a second?

>> Councilmember Chirco: Second.

>> Mayor Reed: Motion is to cancel the 20th. All in favor? Opposed, none opposed, before we leave the 20th, there was one other item that I thought might be on the 20th, that is not, and that is the kickoff of the labor negotiations, the Sunshine Reform Task Force recommended that before we get into the negotiating season, that we have a public discussion of that. And we're just about into that season. So if that's not on the 20th when do you think it will be?

>> Alex Gurza: Good afternoon, Mayor Reed. Alex Gurza, director of employee relations. We're planning to bring that item not on the 20th, but the 27th of October.

>> Mayor Reed: Okay, I think that's important to not get too late in the process. Pete.

>> Councilmember Constant: I had a question, too. I thought we were going to see the sign code update on the 20th, and I didn't see that. Has that been --

>> City Attorney Doyle: That's on the 27th, as well.

>> Mayor Reed: Okay, I think we're done with the two council agendas, 13th and the 20th. Upcoming study sessions, November the 13th, we have nothing scheduled for that?

>> Lee Price: That's correct, nothing scheduled, still on a hold in case the council has something that they want to bring forward.

>> Mayor Reed: Okay. Legislative update. We have a report from Betsy and Roxann.

>> Betsy Shotwell: Thank you, Mr. Chair, members of the committee, joining me is Roxanne Miller, our lobbyist in Sacramento, to give us an brief update and a preview what may or may not happen next week in Sacramento and to answer any questions you might have.

>> Roxann Miller: Thank you, Mr. Mayor, members of the council. I'd like to say we could talk about the good, the bad and the ugly but it's all pretty ugly at this point, to be very, very honest, and I know you're keeping on top of the issues. What I'd like to do is give you a quick overview. We have three priority issues at this point that impact the city and the redevelopment agency. These are carryover items with cleanups to the state budget. Most importantly, certainly, on the city side is the whole question of the implementation of the prop 1A borrowing. You may recall that the legislature, it is a borrow, and we have worked during the postbudget process to come up with the securitization process that will allow cities, counties and special districts to hopefully have a transition under the securitization where we will not lose any of our installments of local property tax. That legislation however, does need some tweaking. And so we are working very hard to have the legislature return next week. We're anticipating they will return the 13th, 14th, and 15th of next week, to try to gain the necessary two-thirds vote required to pass the legislation we desperately need to keep on track, our securitization program. By the way, over 600 local agencies across the state, cities, counties and special districts, have signed up for that program. The second piece that falls under this umbrella of necessary cleanup has to do with the highway users tax. You may recall that we were successful in the original passage of the budget to allow for, first in the senate, the take away, and this would have been \$1.7 billion of local highway user tax. We were able to, in the senate, have that converted to a loan. But when you look at a loan, it's ten years. So what's it worth? It's worth absolutely nothing. The important step, however, occurred in the State Assembly, where there were not the votes to pass it at all. So we avoided that exposure with would have for two years been approaching \$28 million to the state -- to

the City's General Fund. However, we do have a deferral of some of those payments coming up. And that would be both of prop 42 sales tax on gasoline as well as the excise tax. So we need a cleanup on that issue. So those two are coming up. As I said we are anticipating they will come back next week. The key is, the two-thirds vote, as always. We got to 26 votes on the securitization. But not the 27th. We have a problem of trust. We have a problem of accusations, we have a real problem, particularly in the Senate, of factions holding other factions hostage. Until the -- their asks are met. But I would like to report and you may have already heard this, that of the Republicans, all of them in -- unanimously refused to vote aye, with the exception of our Republican Senator Abel Maldonado. Abel got us to the 26. But we could not shake loose, in that marathon last session, the last vote. That's what we are working on. As I said, we are encouraged that they will come back next week. There is another piece to that cleanup and that will be on the redevelopment side of things. And the redevelopment piece, if it were to go forward, could trigger using a different base year than the '06-'07 base year, which has the potential for giving us some greater exposure with regard to the reduction. However, where we're at this point, right now, is that the two bills that can be taken up and by a two-thirds vote adopted and sent immediately to the governor's desk are the prop 1A borrowing securitization and the highway users so that's what we're really concentrating on. And I'm hopeful that the redevelopment issue won't even come up. So that's where we are on those. Over -- the overview at this point, the governor of course has threatened that he will veto all bills. I can tell you that the legislature delivered 706 bills to the governor's desk. The governor thus far has signed three. The big -- the deadline for sign, veto or allow to become law without signature is Sunday at midnight, October 11th.

>> Mayor Reed: So by next week we'll know if he's signed any of them.

>> Roxann Miller: Absolutely. Big 5 met again yesterday afternoon meaning particularly on the water issue. Some saying we're getting closer, others saying we're miles apart. So we'll wait to see what happens there. But the governor has indicated that he's going to hold off until the weekend taking action on other bills, hopeful of an announcement perhaps this Friday, as to what's going to happen. I can tell you major stakeholders are being asked to submit their proposed amendments, suggested amendments, to see what could be cobbled together. I think it's fair to say that we have a balancing act between the fish and the water supply in the state of California. The size of the bonds and water rights are absolutely two key, key pieces to this puzzle.

>> Mayor Reed: That's all that's holding it up?

>> Roxann Miller: Or holding it down, as the case may be. As the case may be. So --

>> Mayor Reed: I got a question.

>> Roxann Miller: Yes.

>> Mayor Reed: Sorry to interrupt but it's on my mind here. In these special sessions, I'd like to know what risk we have of other issues coming back during these special session or can we comfortably wait until January to worry about, for example, the card room bills moving somehow? Do we have to worry about additional gut-and-amend kinds of things, or can we be assured that on the issues we're dealing with on the card rooms that the legislature is going to stay out of our business at least until January?

>> Roxann Miller: That's a very good question, very important question. I can tell you with the success we had at the end of the session, and the complexity of the other issues, and the razor focus on some of those, I think it would be very difficult. I don't anticipate that that issue will surface. It may surface, with regard to under the special session, related to budget and taxation, but that would probably relate to any agreement or changes in the agreement with the tribal interest. And casino gambling in that regard. But I think we did a good job at the end of the session and don't anticipate. Now, your question is also very important because we are increasingly seeing, although we are technically in recess, at the end of the two-year session, you adjourn sine die. The end of the first year of the two year session, you adjourn, but you're in recess. So we are in recess, and what that allows is for the legislature to be called back, as they will be, hopefully, next week. But the other dilemma we're having because of the complexities, and what they left on the table unresolved that last night of the session, we are up to six special sessions. We are everything from education to now the 21st century economy and a new taxing structure to water, to prisons, everything that is key, absolutely essential to the state will find its way into a special session. And those will be convened between now and January.

>> Mayor Reed: Okay, I just want to draw the committee's attention to the excellently memo that the staff put out on card rooms that details the work that you and the City Attorney and I did in Sacramento around the legislation moving to take control of our card rooms, away from us. And I want to thank you for good legislative work there, especially on the Florez bill that was moving. But we have to be vigilant. Especially when they're dealing with the budget. Because the amount of money we get out of the card rooms is much greater than other cities and it's always a potential target let alone the issue of who has control. I think we have to be very cautious on it and I know you will be.

>> Roxann Miller: Absolutely. Thank you very much. Also, I do want to mention, in addition to our hot button highest priorities, where are we as far as the forecast at this point and the state General Fund? Are we showing any progress, what's the projection? The Department of Finance this week again reiterated that they believe that for the start January 1 of the 10-11 year, the General Fund will be down about 7.4 billion dollars. This is important and by all of us --

>> Mayor Reed: You say by January?

>> Roxann Miller: No, this will -- the end of the year --

>> Mayor Reed: The projection for the next fiscal year?

>> Roxann Miller: Right. But it is also important to point out, we have a little bit of good news, and that is, that State Treasurer Lockyer did go back to the money market, he was successful in selling about \$8.8 billion in bonds. So we have changes, too, in the pool money investment board, you may recall. Well, we're not going to have everything backed up, when we hit crisis mode and everything is frozen in the economy and in construction and infrastructure financing, they're adopted kind of a pay-as-you-go. As the financing mechanism is sold, dollars will be released. But I think it is very, very telling. Contrary to what the Department of Finance is saying, is that it certainly looks like the crisis we will be slow to recover, and the crisis will continue. And so contrary to the one-year snapshot of next year for finance, I wanted to indicate to you that, while the treasurer was pleased with the money market's response, he also suggested that, and reminded everyone, California has not really had a balanced budget for about the last 12 years. And so what does that mean to all of us? His estimation, if you will, is that over the next three years, the structural deficit will grow in excess of \$50 billion. That includes year 1, whatever it will be, if it's 7.4 or what. And then it really spikes up. Now a lot of the reason it spikes up and I know you'll appreciate this, remember this, is the gimmickry that we literally have used over the past 24 months to say, we had a balanced budget. And of course a lot of it had to do with the loans from local government, the catastrophic taking and seizure of redevelopment, the \$2 billion. So Lockyer's observation, also is voters not approving the May 19th request, after the legislature had already increased taxes for the next two years, all of the day of reckoning is coming upon us. So it was Lockyer's observation that the legislature will more than likely, in his estimation, have to cut 20 to -- 18 to \$20 billion in the next three years. To have a budget. So good news: You recall, redevelopment, the 8-9 taking of the \$350 million, that lawsuit, we did prevail. That \$350 million taking, which was \$13 million to our agency, has gone away. Department of Finance decided to not appeal, last week. Now, we have joined with California redevelopment agency, and interesting, some of the counties that exercise their authority as redevelopment agencies as well are joining in the lawsuit. We think we have a good chance that lawsuit will be filed in the next about week and a half. And we are encouraged by the earlier court decision that this \$2 billion will be found to be unconstitutional. We need a quick choice -- a decision from the courts, however, because that will be due for us to write a check for the first 62, by May 10th of next year.

>> Mayor Reed: Well, we're not going to get a final decision before May 1st. Because even if we get a superior court decision they can take it on appeal. I think the last decision on the tax take, the gas tax diversion, transportation tax diversion, we just got a decision, was two years in the making.

>> Roxann Miller: That's right.

>> Mayor Reed: So we're probably two years away from having an answer at the minimum.

>> Roxann Miller: And that of course --

>> Mayor Reed: We can't spend the money while that's pending.

>> Roxann Miller: Absolutely, Mr. Mayor, right. That's another example of the band-aid, the gimics, the lawsuit haven that's now coming home to roost.

>> Mayor Reed: You're right about that anyway.

>> Roxann Miller: Some of you may recall that redevelopment, as well as the enterprise zone program, are the two state programs that deal with economic development, job creation, job retention. We're one of the first enterprise zones in the state. After the hearing in the capitol about a month ago, I met with the chair of the committee, assemblyman Perez. We invited him to come. He was going to do two hearings, Northern California and Southern California. We invited him to come to San JosÉ. That hearing will be tomorrow from 10:30 to 1:30. And we have a lineup of the naysayers as well as the strong advocates. This will be a precursor to some bills that publicly will introduced or revisited in January. Some of them on the nay side, who want to turn the program inside out, suggesting that it belongs in more rural areas where you have unemployment in excess of 20 to 30%, but we will continue to make the strong case, a strong coalition statewide, and the agency is pulling that all together.

>> Mayor Reed: Okay, thank you. Any other questions for Roxann by the committee? Yes, I do.

>> Councilmember Pyle: I don't really know where to begin. This is like the (inaudible) has arrived. I do have a couple of questions. One has to do with a bill that Senator Torrico is putting forward, trying to take the tax extraction fee and applying it to education. I think it comes out to about 1.5, 1.6 billion. Have you heard anything about that, Roxann?

>> Roxann Miller: I know that he is working on it. I don't know what the outcome will be at this point but I will certainly check.

>> Councilmember Pyle: The problem seems to be that we have no stable sources of revenue. So is there talk about that? In other words, property taxes go down when the economy goes down. Sales tax goes down when the economy goes down. And at this point our sales tax in the City of San JosÉ is down 28% according to City Manager Debra Figone, as of two days ago. That's cataclysmic. I mean, nobody ever thinks 28%. VTA is down, I'm not sure which period the figures are, but it's 21% in the third or fourth, and 26 in the next. They have not prepared for that. They thought it might be 6 or 7, and that difference is causing further havoc with that agency. Our city is dealing with the 28% at this point. But the residual effects of some of the actions are what I worry about. Because it's going to be worse, perhaps, on the cities than the state might realize. And then, I'm sure, I hope, somebody is thinking in terms of permanent sources of revenue.

>> Roxann Miller: Yes, yes, they certainly are. You may have seen the long anticipated, awaited release, a couple of days ago, of the commission on 21st century economy. That was released. Now, that was a bipartisan 14-member commission, appointments by the governor as well as the assembly and the senate. The recommendations, however, were split vote. It was signed by nine signatures, and five objecting. That now will start the discussion that needs to happen. It has been ongoing. It was ongoing anyway. I think sadly, we find ourselves that the actions in Sacramento have resulted, that not only the state of California is languishing afloat, but their actions have caused us great harm and similar uncertainty. So we're taking a look at those recommendations. I'll have some information back to you there. With regard to the volatility of the revenue sources, as you say, the sales tax as an example. We do have, as part of that recommendations, is one that would eliminate the state sales tax. It would keep the local 1 cent -- the local portion for the variety of purposes that we approve locally, and would create, on a broader level, in a new business receipts tax, that could not exceed 4%. But because we are so dependent in a service economy, this proposal plays on that and casts a very wide net for many entities and concerns, business concerns that heretofore were not subject. So we're going to be taking a very careful look at that. We'll be back to you with it. I think the other part, perhaps, in answer to your question, is that we thought, when the voters approved proposition 1A, by an 84% vote in 2004, that we were finally going to be protected. There is a lot of discussion amongst local government around the state. And certainly in Sacramento gathering, for us to take another constitutional effort, eliminate the opportunity to borrow,

eliminate the opportunity to take the transportation dollars, and finally, recognize the relief and protection that we thought. That of course would require a statewide campaign. And entities who would otherwise, then, lose in the Sacramento scene will be very, very vigorous to protect their options as well.

>> Councilmember Pyle: I've studied the sales tax quite thoroughly, and worked with Carl Guardino and with John Dutra. When it began, when the sales tax was first implemented, the products and the services were included. And then it boiled down to just the goods. Why? Because, close your ears, mayor, the attorneys in the state of California reared up, because you can imagine what the tax would be under services, it was just out of sight. So unless the attorneys, or those who have very high fees, can be exempted, or something can be done, we're going to be back to where we were before, and we will never get services taxed.

>> Roxann Miller: Right. They're estimated to be in excess of \$30 billion in activities that are exempt from taxation in the state. The other thing I think, and there's a lot of skeptics with regard to the recommendations. But the legislature is going to start to hold hearings tomorrow, the next day. This is the first round. It will take several months for them to sort through. A lot of analysis because, obviously, as you're suggesting, we need reliability, we need to move away from the volatility of the current system. But I think it's interesting, doing a quick read through it thus far, is that they chose to not deal with the property tax in any way. And they also did not deal with a recommendation for reform issues. Such as a modification to the current two-thirds vote for passage, are changing it to not just considering a majority vote but maybe a supermajority, 55 or 60 or something like that. So the door is open and it will certainly invite our participation and discussion.

>> Councilmember Pyle: I would love to get a copy of the commission's findings and I'm sure my colleagues would, as well. That would be great.

>> Councilmember Constant: It's nice and thick.

>> Roxann Miller: It is.

>> Councilmember Pyle: Thank you for your report.

>> Roxann Miller: Most welcome, thank you.

>> Councilmember Constant: It's a long report, I downloaded it and haven't made it through even half of it. Just wanted to point out, are it's been 12 years without a real balanced budget and we've got problems due to that that are going to affect us for many years to come. And just a little opinion here is, people who have done this to us are the ones who want to stay in office longer and change term limits. And I think that's something we need to think about as we go forward, each individually, because we haven't been able to fix problems, and the same people want to stay longer to make us bigger problems, and I think that's a serious issue.

>> Mayor Reed: Anything else? Thank you for the report. I think that concludes the state report. Was there a federal report? Okay. We'll move to the public record. Item F, anything in the public record that anybody wants to talk about? I'd like to talk about number A, which is the letter that I received from IAEA about the McEnery convention center exclusive and how Teamster labor contract. This is the second or third communication we've had from people about this that we've talked about. There is a staff information memo that came out from Paul Krutko, distributed on September 11th that talks about this situation relating that Team San JosÉ believes that everything has been worked out but now on September 15th we got another letter from IAEA, it is clearly not worked out at least in their point of view. I had a couple of questions. There was a Mercury News story on it, and I know there's other trade press discussion of this. And a couple of questions relating to this. First, in terms of Team San JosÉ, are their records subject to public records act, so the records around this transaction, would that be available to the public, or to us?

>> City Attorney Doyle: I'll have to look at the agreement and see what it provides. I -- some of the records might be, to the extent that they would otherwise be city records. But to the extent they're Team San JosÉ they're not a public entity so unless we do it by agreement I don't believe so. But we can get back to you on it.

>> Mayor Reed: Okay, because I would like to at least see what the board minutes reflect on the transaction so I can understand it.

>> City Attorney Doyle: They are nonprofits and nonprofits are required to keep certain documents that are public, certain financial documents and certain minutes as well, so we can check that avenue as well.

>> Mayor Reed: I understand there's been a complaint filed at the national labor relations board by someone, I don't know if it's the IAEE or one of the labor groups that's in this argument.

>> City Attorney Doyle: I'm told it's one of the decorators which would be, I guess, a vendor in this case. And that matter is being investigated by the national labor relations board. And they have jurisdiction and I know they've done some interviews.

>> Mayor Reed: And the following question is in terms of our contract with Team San José, how would that complaint resolution effect our contract one way or the other?

>> City Attorney Doyle: Well, you know, they are, Team San José, are required to comply with all laws. So to the extent there might be some violation, that may be an issue. I think really the area we would get into would be their performance measures. We don't have the labor peace provisions we have in other labor agreements with Team San José. This issue of labor peace wouldn't be raised but we have performance issues, the City of San José performance measures are coming to issue. To the extent they can't meet their targets or those performance measures? As a result of or as a consequence of certain actions, let's say trade shows go to other jurisdictions, and their numbers fall below what they should, we could arguably have a claim or an issue with them under the agreement. But right now that is speculative.

>> Mayor Reed: I would like for you to be prepared to answer some of those questions on the 20th when this comes to council. Because I'm going to and I'm sure other people will have questions as well. So I don't -- this is a letter to me. Probably need to get some sort of a draft response that I can send back to Mr. Steven Hammer on this as well and can we get staff figure out how we should respond to this?

>> Ed Shikada: Sure will.

>> Councilmember Constant: So I'll make a motion to refer that item to the clerk's office and note and filing the remainder.

>> Mayor Reed: The motion is to refer that particular item to the staff, and note and file the balance of the public record. All in favor, opposed, none opposed, that's approved.

>>> We don't have any boards, commissions, committee appointments to talk about. We need to look at approval of a designation of Operation Prom Dress as a city council sponsored special event.

>> Councilmember Constant: Motion to approve.

>> Mayor Reed: Need a second?

>> Councilmember Pyle: Yes.

>> Mayor Reed: Okay, that's what I thought. We have a motion to approve Operation Prom Dress. And those of you out there got those prom dresses hanging in the closet that you're not going to wear again, there's a high school student who would love to have them. This is a great event that Councilmember Nguyen has organized with a lot of help from other people, and we appreciate that. Motion is to approve. All in favor, opposed, none opposed, that's approved. Now we'll take up the work plan for studying how and whether communications about city business and employing new technologies for noncity owned equipment should be subject to disclosure requirements. I have a memo outstanding some questions to be dealt with and a work plan from Tom Manheim, who is here.

>> Tom Manheim: Thank you, Mr. Mayor, committee members. You'll recall that when we met on September 9th, you did have a discussion that identified a number of issues related to sort of use of new technology and communications and disclosure issues. And both in terms of records as well as about the communications themselves. Your direction was to come back with a general framework, or a work plan, that would guide your future discussions. And so that is what is before you today. And what we are asking is for the committee to confirm essentially that we have framed the issue correctly, that it reflects or is consistent with your previous discussion, and your understanding of the issue. The staff memo has more details. But I will just briefly summarize. We identified two general policy questions coming out of that discussion. The first was, should communications about agenda items be disclosed when they're sent or received during a council meeting. Which is -- this was the whole discussion about what's going on during the meeting itself and whether there should be an immediate disclosure. The second was the general policy of whether or not, or how we should treat communications about city business that occur on noncity owned equipment. So we have a set of questions that we have identified related to each of those. The first one, the communications during council meetings, is fairly straightforward in terms of that you have the threshold question of whether or not there should be a disclosure requirement. And then we would come back with some recommendations or I guess pros and cons regarding who that should apply to. So who it should apply to in general in terms of the requirement to make the disclosure. Then there were the two subissues of are we talking about disclosing communication between for instance a councilmember and their staff or a councilmember and city staff member? Or are we talking about communications that involve folks who are not city employees, communicating during a meeting. Those are the questions that we identified related to the first policy issue. The second one regarding communications on city owned equipment. The threshold question really is can the city impose a requirement regarding privately owned equipment. So we would explore that issue and if so the potential enforcement mechanisms, what the potential enforcement mechanisms would be. Again, the question of to whom it should apply, the -- there were a number of technical issues that we discussed, and we intend to come back to you with much more information on that. This is the question on sort of what each device is capable of. This is not even a matter of what your cell phone provider allows with texting or some of these new media, but literally each device manages these things differently. We would come back with more information on that and then related to that sort of the resources knowledge and skills that we would need to have to implement any policy that the council wanted to impose. And then, finally, the last question that we identified, and these again, there are many questions sort of underneath all of these, but these were the broad categories. The issue of whether or not imposing a disclosure obligation when requested, does that then create a retention requirement, where we then are needing to retain these records or are we simply talking about, if the records exist, disclosing them? That is, as we reviewed the discussion, and had some of our own internal discussions about where this -- what we would want to come back to you with, those are the questions we identified. What we would hope to get from you today is either a confirmation that we have got it right or suggestions on other areas that we could add to this list.

>> Mayor Reed: I had a couple of suggestions. One is trying to think through the device issue. It seems to me the issue is whether or not a communication about city business on a private piece of equipment should be subject to public records act request, the public records act. A fundamental question. Or can you somehow turn a city communication into something personal and private, just because you do it on your own device. At a policy level, I don't think that we should do that. That if we just simply were to say that a communication on city business is a public record, whether or not it was communicated on a private device or a public device, then we treat it like every other public record. The retention policy, all the other issues we have would just apply. And we don't use that as a reason not to treat it as a public record. And we don't have to get into a lot of questions about, well, the retention policy as a retention policy. Where does it fit as a retention policy, and you apply that. There may be some technical issues about, if somebody asks for it and you have it, if you've kept it in the ordinary course of business and whatever the rule is about whether it is a record against the retention policy, the question is how do you get it off your device to give it up? But issues like enforcement and to whom it should apply, how do we enforce our existing public records act. If I have got an e-mail on my computer in my office, it shouldn't matter if it's on my hand-held or my desktop. So I'm trying to simplify it down to first, the fundamental question of should you be allowed to convert something that really is about government business into a personal communication just by doing it on your own device, and I think the answer to that for me is no. And that simplifies a lot of these other questions. I'm sure other committee members have thought about this, as well. Pete.

>> Councilmember Constant: On the previous slide, the communications during council meetings, I think it needs to be broader than these two questions here. I don't know if these are meant to be limiting or meant to just

give a couple of examples. But I would like to see specifically address -- sorry, I would like to see specifically address communications from registered lobbyists and communications from anybody who is an applicant, or an appellant, in an issue that we're handling and take into council action. I think those are areas where there's -- if we're really getting to influence, getting messages from your staff I don't think are as much to influence you as perhaps getting from those other sources. So I'd like to see that. And then I'd like to echo a lot of things that the mayor said. We have those fundamental questions to answer first and the technology, just since we talked about this last, when there was no way for me to get text messages off, somebody wrote an app that takes text messages off iPhones. It's very easy to do now, and we just discussed it, what, three weeks ago. So the technology does advance pretty darn quickly. So I think we just need to get the parameters and kind of evolve with the technology as it moves forward.

>> Councilmember Chirco: I kind of had a lack of knowledge question, which has to do with, I mean, I know that Scott Green, my previous chief of staff, as well as Peter Hamilton, they both have personal devices, but they have city accounts. And once it goes in -- if they're using their city e-mail, or then it's in the city system. So even though it's their personal device, as a matter of fact, Peter had brought up the question. They wouldn't need access to his personal equipment, it's now part of the city's equipment because he would use his city e-mail.

>> Tom Manheim: If I could just follow onto that, the point you make is a really good one. We actually had a fairly lengthy discussion on that internally. When we were just brainstorming about different mechanisms for doing this. Once it gets onto the city system, we have it. And it is in fact a record. Then this question of is it a record or not a record, is resolved. If it's about city business it touches the city's system. Then it's fallen into what we would call I guess the normal category of records within the city or normal technology.

>> Councilmember Chirco: I just thought that was kind of a simple way, and I realize, if people are going to misbehave, they will misbehave. But I know people who use their personal computers, but they have the connection to the city, and it's all part of the city system. Thank you.

>> Mayor Reed: Nancy then back to Pete.

>> Councilmember Pyle: Just wanted to say, I definitely agree with the mayor and I think I agree with you too, Pete.

>> Councilmember Constant: Wow!

>> Councilmember Pyle: Gosh, wow! Everybody knows we're kidding. I think anything that causes undue influence, on the law-making group, during a meeting, should be eliminated. And as far as I'm concerned, we could all save ourselves a lot of time and work and effort, and looking around and all the rest if we just checked in our phones at the beginning of the meeting, got them back when it ended. It just seems like to me the simplest way to go. I know there would be a hue and cry over that one, but we still have our e-mail account, we still have a phone at that time dais. So it's not as though we have no more toys left. So that's kind of where I'm coming from. Let's keep it simple.

>> Mayor Reed: Pete.

>> Councilmember Constant: I just wanted to point out something that the Vice Mayor said that brings us back to a conversation we had on some significant public records requests. And specifically thinking of the one, I think it was in fact Norcal that -- when we were talking about how much it would cost to go through the e-mail system to pull out the records. I have the city e-mail on here, as well as my personal e-mail. But when I send an e-mail from here, it doesn't show up in my sent box on my inbox. So when I do a search for a public records request on my system, it doesn't always show up there. So I think we would then have to be looking at what we do from the I.T. side and how that would be handled. Because that's -- I'd hate to say you just search your personal folder, your PST file, and you don't find it there to find out it's stored somewhere else. So I'd want to make sure we really check out that type of stuff as well.

>> Tom Manheim: And that's part of what we would have to look at when we're looking at how the different technologies work. The Palm Pre does. I was surprised to discover that, because previous Smart Phones I've had didn't. This one does, which was a relief; makes things easier.

>> Mayor Reed: Couple of things. One is, back to the other slide about the other question, on this topic, the staff. No, the one that has the staff members on it.

>> Tom Manheim: The last one?

>> Councilmember Chirco: Second.

>> Mayor Reed: The communication between councilmembers and their staff, councilmembers and other city Santa staff, we ought to just take off the table. Because I'm thinking of all the reasons we have, the mental process privilege, the deliberation process, those are all going to be exempt from disclosure anyway. And those aren't really the things we're trying to get to. And I think what we are trying to get to is the communications from people who have an interest in the item, the financial interest in the item, that are being communicated, instead of standing at the microphone, communicating, they're being communicated privately. And make sure either that those don't happen or if they happen, they get disclosed. Cell phones make noise sometimes. And I would suggest that one place to look is government code section 84308, because it talks about people with an interest in it, their agents, and there's at least a precedent, during the course of a meeting that ought to be made in public. If it comes some other ways I think you make it public somehow. But the communications from staff members ordinarily wouldn't be covered anyway and I don't think that is the issue we're trying to get to. And whether the staff member writes it on a note or sends it by text message it's still an internal communications, that's subject to all sorts of other privileges.

>> Tom Manheim: So, if I can risk trying to summarize a general theme that I think I'm hearing from the committee, it would be at least certainly in terms of the communications during a council meeting, that what we focus on is communications between councilmembers and people who have an interest in the business that is being conducted during the meeting, would that be a fair encapsulation?

>> City Attorney Doyle: When you say interest, do you mean financial interest or interest?

>> Tom Manheim: I didn't limit it to financial.

>> City Attorney Doyle: Because if John Q. public is one communication, but the lobbyist or the applicant is something else.

>> Tom Manheim: That's a good question.

>> Mayor Reed: That's a very important question. Because if you have got one of these matters where people are sending e-mails, even if you give up the cell phone, you still might be getting e-mail Communications from the public. Again, that should be communicated in the open, I don't know how you do that with e-mail.

>> City Attorney Doyle: I think we're going to come up with policy options.

>> Mayor Reed: I want to go back and see if the rest of the committee agrees with the policy premise that a communication about city business doesn't somehow become private, just because you do it on a personal device. And whether that's a fancy cell phone or a home computer, if it's about city business, it seems to me it ought to be subject to the rules, whatever they are on public records. And you can't just say oops, that would have been a public record but because I did it on my home computer, it's not. I don't know if everybody agrees with that or not, if not, we narrow down the focus that staff is look at.

>> Councilmember Constant: I definitely agree with that.

>> Councilmember Pyle: I do too.

>> Councilmember Chirco: I really agree, because it doesn't matter if it's city business or your own personal business as an employer or whatever, it's still work business. And you can't separate the conversation from what you are currently doing.

>> Mayor Reed: I think so. And at that policy level I think you just exclude all of the issues about, well, what about my personal manages with my wife, or all of those kinds of things. That's not what we're talking about. We're talking about the nature of the communications, not highway it was communicated. I know there is a case about a police officer who was using a city-issued device, and they were trying to search it, or did search it. And the court said you need a warrant. Well, they weren't looking for the city communications, they were looking for other things which the officer didn't want to have disclosed, because they were of a personal nature. So I think that issue is just not there. Because we're only talking about a certain kind of communication, as opposed to the device on which it's communicated. And then we get to the issues of okay, if I have something in my own, that is a record and we get a request, how do I deal with it? I think those are important things for us to figure out. But at least we can narrow down the scope of what we're asking to you look for.

>> Tom Manheim: That's very helpful, I appreciate it.

>> Councilmember Constant: I'll just disclose I got four text messages during the meeting but none about this topic.

>> Tom Manheim: But were they -- [Laughter]

>> Mayor Reed: Are you getting milk or bread on the way home?

>> Councilmember Constant: All right, that's personal. [Laughter]

>> Mayor Reed: Okay, anything else on this? A time frame for you to do this work, you've got other sunshine related things that you're working on.

>> Tom Manheim: We do. We're coming back to the council on the 20th as you know with some other items trying to get back to Rules on one sunshine-related item. I believe we said the middle of November, we're -- what I would try to commit to is, before we all go away for -- to enjoy Thanksgiving with our families.

>> Mayor Reed: Well, we have the police records issue, which is a biggie, on the 20th.

>> Tom Manheim: That's correct.

>> Mayor Reed: We need to get that behind you so you have some other things you can work on.

>> Tom Manheim: Yes.

>> Mayor Reed: Any further action on this, or discussion on this?

>> Councilmember Constant: Motion to approve the work plan.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion is to approve the work plan as we've modified it here. All in favor? Opposed? None opposed, that's approved. We have nothing to add to council committee agendas, we have no other items under open government initiatives, open forum, Mr. Wall. I hope we're going to get a explanation of the new attire.

>> David Wall: Well, yes. I'm a candidate for the civil service commission. And Caesar's rules sometimes dictate, you have to openly violate Your Honor's Green Vision policy. I want you to make a law and have council pass it to completely outlaw this form of attire. Because it's against the environment. It's not effective, it's not efficient.

>> Councilmember Constant: I second the motion.

>> David Wall: And it would be a stimulus to the economy because there would be a run on bib overalls. Next I want to thank you and a continuing thanks for your \$27,237.50 pay cut. It's outstanding in relation to, add the cost to your solar roof. Now, that's an enormous cost. That could have probably paid for that entire roof in one year. So we thank you for that. We thank you for that segment of the environment, as opposed to this nonhelpful segment of the environment. Now, let's keep talking about the environment. We need to look at storm drain cleaning prior to the onset of bad weather. It could be a very wet weather this year. Also, look at the report for the wet weather stability project or the second outfall at the plant. Talk about that tomorrow. Lastly, Councilmember Campos has been the only one to support sustainable gapping with all this talk about doom and gloom about sales receipts and sales taxes, trust me, food is still an issue. Thank you.

>> Councilmember Constant: I agree with that one, too

>> Mayor Reed: Just like to say that the solar installation I put on my house will be paid for out of my electricity. So power purchase agreements can be done. Anything else? Okay, we're done, we're adjourned.