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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 13th, 2010. Any changes to our agenda order to discuss? Okay, first would be October 19th agenda for the city council. Anything on page 1? I've got a note here about adjournment.

>> Councilmember Constant: I'll be handling that.

>> Mayor Reed: Okay.

>> Councilmember Constant: I think we've already sent over the one --

>> Lee Price: That will show up on the amended agenda on Friday.

>> Mayor Reed: Anything else on page 1? Page 2 or 3? Page 4 or 5? Page 6 or 7? I have a note, there's a request to defer item 4.1, revisions of the public entertainment ordinance for a week to October 26th. I don't know where that came from --

>> I think the ordinance may need a little more time to be completed.

>> Mayor Reed: Little more time for the ordinance. Okay. Anything else on 6 or 7? Eight or 9?

>> On page 9, 6.2, the high speed rail item, we will request deferral to November 16th and Hans Larsen is going to be here shortly to talk about that item when we get to it under H.

>> Mayor Reed: Right, that is a specific item to be discussed but that will be the recommendation. Anything else on 8 or 9? 10 or 11? I have no written requests for additions. Any other changes to talk about?

>> Councilmember Constant: Motion to approve.

>> Councilmember Chirco: Sunshine waiver on 7.1.

>> Mayor Reed: Was there a question on that --

>> We don't need to request that.

>> Councilmember Constant: Motion to approve.

>> Councilmember Chirco: Second.

>> Mayor Reed: City Attorney.

>> City Attorney Doyle: It may mean that the ordinance may neat knead tweaking. There is an agreement online right now but there might be some last minute changes.

>> Mayor Reed: What would the sunshine on that be?

>> City Attorney Doyle: It would be that the agreement needs to be posted with the memo. The memo has been posted online and to the extent there are changes.

>> Mayor Reed: Since the agreement is posted, that's included in the motion. All in favor, opposed, none opposed, that is approved. October 26th. City council. Draft agenda. Anything on page 1? Page 2 or 3? Page 4 or 5? Page 6 or 7? Page 8 starts land use hearings, anything on page 8 or 9? I have no written requests for additions. Do I?

>> No.

>> Councilmember Chirco: Move approval.

>> Mayor Reed: We have a motion to approve the agenda. Second. I have one request to speak on the agenda. We'll take that now. Lisa harmer. Good afternoon. My name is Lisa harmer. I represent the Campbell village neighborhood association also known as Cambrian parcel 36. The residents of Cambrian 36 have received public notice for the October 26th, 2010 public hearing. To prezone and initiate the annexation of our neighborhood into the City of San José. The notice states that the annexation is in accordance with government section 56375.3 which waives protest proceedings for the annexation of urban islands and pockets. However, Cambrian 36 does not comply with all of the required provisions within this code. We receive no services from San José nor will we benefit from the annexation into San José. In fact, our current level of services will decline as a result of annexation to San José. For example, the September 22nd, 2010 San José staff report provides four options for fire and EMS services, to our area. Yet each of these options will result in a reduction to our current service level. As such, the San José annexation process must be deferred until San José complies with the government code. Furthermore, we request from the -- the appropriateness of Cambrian 36 inclusion in San José urban service area and sphere of influence which was drawn up over 38 years ago in 1972 and, to our understanding, has not been reviewed since then. Accordingly we request that Lafco conduct a service review of San José pursuant to government code section 54630. Please defer putting this on the city council meeting agenda until proper procedure that is in compliance with the government code is implemented and the urban service area is reviewed. Thank you.

>> Mayor Reed: Thank you. We have a motion to approve the agenda. City Attorney do you have any comments on whether or not this is ready on the agenda?

>> City Attorney Doyle: No, I think the staff report addresses those issues, but we can make sure next week if there are any issues we can raise it then. This is on the 26th.

>> Mayor Reed: Okay. Councilmember Pyle.

>> Councilmember Pyle: I'm not quite sure what the process is for that but we had a lady two passed away and would like to do a few words about her as we have done in the past for community members.

>> Mayor Reed: On this agenda on the 26th?

>> Councilmember Pyle: I'm not sure.

>> Mayor Reed: Unless we already have one designated I don't see anything designated. So that would be a closure in honor of, if you'll get that information to Sara we can get that onto the printed agenda.

>> Councilmember Pyle: Definitely, thank you.

>> Mayor Reed: And we'll include that in the motion, of course. Anything else on the motion? All in favor? Opposed? None opposed, that's approved. We'll now take up the Redevelopment Agency for October 19th. Anything on page 1? Page 2 or 3? I have no written requests for changes. Anything else?

>> No there are not, Mr. Mayor.

>> Motion to approve.

>> Mayor Reed: Motion is to approve. All in favor, opposed none opposed, that's approved. October 26th, Redevelopment Agency agenda. Anything on page 1? Or page 2 or 3? Just note this is the hearing on the redevelopment budget message which is not out yet but will be out soon. Any other changes, written requests?

>> No other changes.

>> Councilmember Constant: Motion to approve.

>> Mayor Reed: Motion is to approve. All in favor, opposed, none opposed, that's approved. Turn now to legislative update. There are no study session agendas to look at, at this time, right? I don't believe. Legislative update. Betsy Shotwell.

>> Betsy Shotwell: Thank you mayor, members of the committee, Betsy Shotwell, Director of Intergovernmental Relations. You have a number of items after me. I'll be very brief. Just to recap, the governor signing the state budget, the $87.5 billion budget Friday night, following the senate passing that morning. It includes also almost $1 billion in vetoes that the governor made to the budget document. There's still a number of trailer bills related to the budget that haven't been signed. He is out of the country and will return and do that. And we are also just gaining the printed version of those billings for analysis. Roxann Miller our state lobbyist and I are putting together an info memo that will go over those additional bills to the budget. In addition to of course the second year of the take of Redevelopment Agency's the $13 million to the City of San José in may is still there. It includes a number of optimistic maneuvers, hopefully, they play out, I don't know. The federal dollar amount is optimistic, that Congress would be providing the state. There's a program that is moving along quite quickly to sell and lease back 11 state buildings. Again there's mixed opinions of whether that will make any revenue or be a wash. Those will be things that will be obviously we'll know more as these play out. But that's moving quite rapidly. So with that, there's opinions of course going right and left depending what happens November 2nd. So all can I say the leg analyst has put out his brief review indicating concerns that probably when this -- as the next governor's being sworn in we'll see, again, deficit budgets. Just as a summary, in three years the state has had over $100 million in budget deficits total, that they've been dealing with. So we'll get through for a few months, and we'll have to see how the revenues look and the projections. But with that I'd be happy to answer any questions.

>> Mayor Reed: Well it sounds like another two to three month budget. As happened last year or the year before, I forget -- there's been so many of them.

>> Betsy Shotwell: Exactly.

>> Mayor Reed: And what I anticipate is if proposition 22 is not approved by the voters, that the day after the election they're going to be coming back looking for local government funding. And so I think we'll be back in the budget cycle very quickly, if the voters approve proposition 22 then they won't be able to take our money. But they're already proposing -- has the governor signed this?

>> Betsy Shotwell: Signed --

>> Mayor Reed: The budget?

>> Betsy Shotwell: He signed the budget Friday night but he hasn't signed the dozens of trailer bills from health care.

>> Mayor Reed: Funding subject to litigation which probably won't be resolved by then.

>> Betsy Shotwell: Correct, it's on appeal.

>> Mayor Reed: I think we can count on losing at least $13 million in this round. Other questions or comments? Councilmember Pyle?

>> Councilmember Pyle: You know I'm always consistent with this. In the event that proposition 22 does pass, is that what you were referring to, mayor, that we're going to have a two to three month -- okay. So if it does pass some things will have to be changed obviously in reference to the state budget.

>> Betsy Shotwell: Well if 22 passes it will be interesting to see how they balance the budget in future budgets or cycles to your point. We've seen budgets balanced in February, March, September, pick a new month. It will be a new order if 22 passes as to how they will balance the budget.

>> Councilmember Pyle: Thank you.

>> Mayor Reed: Anything else on legislative update? Okay, thank you very much for the report.

>> Betsy Shotwell: Thank you.

>> Mayor Reed: Our next item to consider is the public record. Any items in the public record the committee would like the pull for discussion?

>> Councilmember Chirco: Move to note and file.

>> Councilmember Constant: Second.

>> Mayor Reed: Motion is to note and file. Have one request to speak on the public record. Mr. Wall.

>> David Wall: This is in reference to item number I. In which I request that the auditor be assigned to look at the cost of the Consortium for Police Leadership in Equity insofar as how they are dealing with the San José police. I've just received the copy of the memorandum of understanding, and with CPLE and the city. Via the San José police. And there are significant problems with it on just my first read. But in here, on page five, quote, the parties further commit to work together in good faith, et cetera and so forth, SJPD will work with UCLA researchers towards obtaining the consent of individual officers for the officers' participation in the studies. This is a lot of San José police officer time and resources time that you've dedicated for this. The actual scope of work is a sham, Mr. Mayor. It's a sham from its onset. So then it becomes a contrivance. The report from CPLE has really nothing to do on race and bias. What it's predicated on is allowing police officers throughout the country not to enforce immigration aspects that have already been entered into federal law. This is already state in their report, in the first few pages. This alliance with CPLE is basically a lie. Allowing a third party, a political agency, to create public policy via police departments. In here it also states that nobody in the city is an agent for UCLA without the express permission. So it then falls on your shoulders, did you give express permission for the chief of the San José police to be in uniform and act on this advisory board in addition with all his other aspects clearly this is a conflict of interest and the chief of the San José police should be immediately removed from command.

>> Mayor Reed: Your time is up. Any other comments on the public record? We have a motion to note and file. All in favor? Opposed, none opposed, that's done. Taking us to item H-2. Which is a report on posting public calendars by city officials on the city's Website. This is a periodic report from the City Manager's office. Councilmember Constant.

>> Councilmember Constant: I just had two questions. We still have quite a bit of times where there's technical issues that are preventing calendars from being uploaded on time, and I'm wondering what we're doing with IT to address that technical issue, because it seems to be less than last time, but still quite a few times.

>> Well, every time that there's a technical problem reported, we immediately get with I.T. Ask them to try and expedite services. It's usually on a Monday when we find out about it. And much of the time they're able to go in and fix things. Now, the technical problems can be anything from user misunderstanding and error to an actual issue with new computers being put in place, which sometimes disrupts the calendars. But we are working with them steadily to --

>> Councilmember Constant: So it's not the same problem over and over we haven't fixed it's just a series of issues?

>> No just computers being their lovely selves.

>> Councilmember Constant: Okay, my other question went and I think we briefly discussed this a couple of times ago, more of a question for us, is what about the ones that keep coming up? I think we have one where it was over 80% of the time noncompliant, and others where they were noncompliant more than they were compliant. You know, it's a minority of the calendars. But in those cases there still seems to be issues. Where do we go from here on that, other than just saying, okay, we're almost good enough?

>> Mayor Reed: That wasn't just a rhetorical question?

>> Councilmember Constant: No, it's not rhetorical. I'm looking around. We just have a lot of rules but there doesn't seem to be any way to make sure that they all get followed.

>> Mayor Reed: Why don't we specifically ask these folks why they weren't able to comply? At least they can answer the question. And maybe we can find out there are other technical issues that weren't reported as technical issues or maybe absences, I know was another reason. Maybe there's more there. And just asking the question obviously will bring some attention to it. And could help with future compliance, because then people understand we're looking at it. It's a part of public record and they might want to improve their performance.

>> Councilmember Constant: So how do we go about asking the question? You say we as the Rules Committee ask the question or what's the appropriate way for that question to be asked?

>> Mayor Reed: I think we could just ask the councilmembers or the individuals, here is the report, you weren't in compliance. If you weren't, why don't you tell us why not? I don't know, that would be one of the ways to do it.

>> Councilmember Chirco: One of the centers that's called out --

>> Mayor Reed: You have reached that page?

>> Councilmember Chirco: Oh, I have. Frankly I don't know that -- what is the punishment. Your community calls and shakes their finger at you? The idea is that the calendars need to be published, they need to be published in a timely manner. I don't know that I feel it's necessary to get out the whipping post and ten lashes with a wet noodle, if, I think as one of the sinners up here because it appears that 1, 10 and the mayor have been perfect, that's a pretty high bar. How about I raise my hand and promise to do better. I really do, Councilmember Constant, I don't know what you want as far as what do we do to these people that consistently don't -- I'd like to think it's not consistent. People are doing good work. Posting their calendars are officially important, but in relation to what?

>> Councilmember Constant: Well, actually, you didn't fit the description that I provided, so you self-inflicted that wound, but --

>> Councilmember Chirco: Well, I'm not troubled about self-inflicting myself, but I do think it's a question that I think should be addressed.

>> Councilmember Constant: I just worry, if we have this sunshine rule but then in some cases, and you know there is somewhere, like I say it's over 80% noncompliant. What's the -- what's the purpose of having it if we're not doing it? That's my question. And I brought this up when we first initiated this, and some of the other measures. If there's not some encouragement to comply then things kind of fall by the way side. So I just want to make sure that it's discussed and you know we've made a commitment to the public that this is what we're going to do. And, you know, obviously there are times when things don't happen because someone is out sick. But if there's a pattern seven out of nine reports not completed or times when calendars are out of date for a full month, not just from the previous week, I think those are issues that deserve more attention.

>> Mayor Reed: Another suggestion I could speak to individual councilmembers, say guess what, you were worst. Do you know why? At least I ask the question, in an informal way.

>> Councilmember Chirco: Well I think it's another reporting-out to our public. So I think if it's a staff member, possibly the councilmember could be made aware of it and if it's a councilmember the publication of this I think speaks for itself. It is a public document. It is on the Website. It certainly is a tool to evaluate how you're doing your job although my bigger concern would be, does your calendar never show up? I mean, is it -- is it a day late? Is it half a day late? Is it you know 20 minutes late? And so I would ask Tom, have any of these calendars not shown up and what is an average? Yes, our goal is to be timely.

>> When you say have they not shown up --

>> Councilmember Chirco: Are they still not on the Website?

>> They're on the Website, some, as you can see, the reason that we post the date of the last updating, is so that you can have an idea of how long it has been since the update occurred. In many cases, the calendars that are late are updated within a day or two. And that's indicated as well. So there's, I guess in this last report there's really only one case where the calendar was out of date for a long period of time.

>> Councilmember Chirco: Then I would probably suggest that -- to ask the mayor just to speak to the councilperson and see if there's a particular problem that can be addressed and how we can make this a more timely report-out, so that it is available to the community. I'm less concerned with a day late. Rather than Tuesday, three weeks late. Any other ideas? Councilmember Pyle?

>> Councilmember Pyle: No, I agree.

>> Councilmember Constant: I'm okay with that as long as there is attention to that. Other than ooh a report comes by, there needs to be some accountability.

>> Mayor Reed: I'll pick out the winners for the award of the least amount of compliance and talk to the councilmembers who -- I see a couple of chiefs of staff are kind of in a very poor compliance category. Why don't we do that, see how that --

>> Councilmember Chirco: Try that.

>> Mayor Reed: See how that works, okay, I'll do that.

>> Councilmember Constant: Mowing to approve then.

>> Councilmember Chirco: I'll second that.

>> Mayor Reed: Motion is to approve the report. All in favor? Opposed? None opposed, that's approved. Next is to review a preliminary work plan, a proposed evaluation criteria assessing options for maximizing financial benefits from the San José municipal water system to the General Fund. And with the recommendation to have this go to the city council for action October 26th. We have a report from the City Manager on this so we'll start there. I know Councilmember Herrera wants to speak to it before we're done here. We'll do that.

>> Ed Shikada: Very good, why don't I lead off. Mr. Mayor, members of the committee, Ed Shikada, Assistant City Manager. I'll just set this up. In terms of reiterating that the report before you this afternoon is a follow-up to the June budget message at which the council directed the staff to examine options of increasing revenue from the municipal water fund, municipal water system frequently called Muni water. So Jeff Ruster, our deputy director in the Office of Economic Development, will provide a brief overview of the report. This is a substantive issue, and as such we have a recommendation to bring it forward for the full council consideration. Would like to note a calendar conflict we identified at staff, so if it be the pleasure of the committee, we would revise the date for report-out to the full council to November 9th, rather than the 26th of October, if that works. So with that, Mr. Ruster.

>> Jeff Ruster: Thank you, Ed. Thank you, councilmembers. As Ed mentioned, we're here based on June direction that we received from city council to explore and consider various options around the potential sale or lease of Muni water. I think it's important to point out kind of as background and context for this exercise that since the city purchased Muni water back in 1961 for $253,000, there have been at least seven different occasions where either at the city's urging or someone came forward, a third party came forward to propose a potential sale or lease, staff as considered this and city council has considered this again on a variety of occasions. The most recent intensive exercise occurred back in 2002. There was a significant amount of staff time and resources that were spent on that exercise. Of course there was no sale or lease that was consummated at the end of that, there was an emergency repair agreement that did result from that with a third party. So back in April of this year, there was an offer that was received from the San José water company. There were two key components to that offer. One surrounding a lease, San José water company, again this was a letter of interest, put a value around

the lease in terms of an upfront payment of about 25 to $40 million depending on the length and other conditions surrounding the lease, and also there was a second component related to the sale of the system, where it was proposed to be a safely $54 million up front, and then a franchise fee of approximately $4 million a year, for a net present value of approximately $116 million. So with that, this is obviously an important consideration, in terms of the City's budget situation. I do want to acknowledge the time, the contributions of Ashwini Kantak, Mansour Nasser, John Stuffelbean, Jennifer Pousho and Patty Degnan as we've kind of initiated this exercise. Muni water serves four areas: North San Jose, Edenvale, Coyote Valley and Evergreen. It has 26,300 connections. It produces about 18.3 million gallons of water per day. Serves 10% of the city and according to the most recent projections, its population for its service territory will increase by 65% between now and 2040 to about 182,000 residents. By all accounts, Muni water is a very well-run, well-managed system. It has no capital improvement, no capital backlog whatsoever. Since 1995, Muni water has contributed more than $35 million to the General Fund. So important part of our presentation today is really to confirm with you that the main reason for directing staff to undertake this exercise is to support the General Fund, to find additional revenues to support the General Fund. Many municipalities, jurisdictions have looked at privatizing their water systems because of other reasons, technical inefficiencies, poor management and/or kind of a backlog in the place of capital improvement. That is not the situation with Muni water by all accounts. So again, we've taken this exercise seriously. There -- based on a written review of documentation, based on the input of counsel, there still seem to be formidable issues that would confront the potential sale or lease, not the least of which is the issue around the reliable water supply. 25% of the water that Muni water receives come from the Hetch-Hetchy supply. That is governed by the San Francisco Public Utilities Commission. Under the Raker Act, there are prohibitions against that water being provided to a private operator. A similar restriction relates to private use activity. The other 75% comes from the Santa Clara Valley Water District. The district has used tax exempt financing throughout the year to support the development of its system. Again they have certain limitations in terms of how much activity, how much of their supply can go to a private operator. If it exceeds a certain limit they would lose their ability to issue tax-exempt bonds going forward and potentially put in jeopardy the tax-exempt bonds that are currently outstanding. So that is a risk as well. Required approvals. Depending on the nature of the traction, a sale or lease, different types of approvals may be required. But you're going need approvals potentially from the public utilities commission. From the San Francisco Public Utilities Commission, in certain cases, with the voters, as well. In addition to city council, Santa Clara Valley Water District in terms of the agreements, water supply agreements. So there's a series of approvals that could prolong the time to consummate any potential transaction. Our best guess in terms of a base case analysis is that if we were to move forward, not being conservative, not being optimistic, that probably we would be consummating this transaction sometime around December of 2013, in part because of the issue related to securing those required approvals. Another key issue would be the rate structure. With the proposal by the San José water company, to purchase or lease the asset, there was also information regarding a rate increase of 29% in terms of the users, that would be over the short term three to five years. We would have to also assess what would be the longer term impact on rates. And also, the control of rates as well, right now it is city council that controls the rates. It is important to point out that the San José water company does play an important role in providing incentives for development for the areas that it does serve. And then there are other issues related to city priorities. Not the least of which is the Green Vision, and a desire of the city to attract and retain clean technology companies. Again, the Hetch-Hetchy water supply is a very pure water supply. It is a benefit for high tech companies as they go through their processing of the various equipment and things that they do produce. Any alternative water supply may not be as high of a water quality supply and could therefore raise the cost of their operation and maintenance. There are other things related to water conservation policies, future development of the areas, and things related to fluoridation right now, which has been a longstanding effort of Muni water. So as we began to confront these issues and still trying to be focused on other revenue enhancement operations to support the General Fund we began to explore some alternatives which are only very preliminary and require much further legal analysis. But just to give you a flavor of what we're looking at, one of which would be either a tax or a transfer, a voter approved tax or transfer equal to 10% of the revenues of Muni water. Muni water revenues are $25 million, that would be $2.5 million. It is important to note that according to the current municipal code for San José there is an 8% rate of return plus a 2% in lieu of franchise fees. So it is 10%, but because of proposition 218 considerations we are no longer charging that fee. So the only contribution that Muni water is putting forward to the General Fund is their $800,000 for this year for overhead. Another option, again subject to much further definition and investigation, relates to some type of impact fee or rental fee as it relates to the right of way for the municipal water system and their pipes, systems, drainage that would basically offset the cost for the operation the maintenance the capital improvements to the right-of-way. Again, we don't even really know what the anticipated revenue that could be generated from that, our initial investigation would lead us to

believe that that would not require voter approval and hence could be taken up during the next budget cycle for next year. So again, kind of with that as the framework and with some of the key issues put forward really what staff is recommending are two tracks. We would come back in February-March and, in the interim what we would be doing again two things. One is conducting a prefeasibility exercise, which is really looking further at some of these issues related to the water supply, private use activities, the things I just mentioned to really understand how real are these issues. They seem to be real but I think we all would like more time to really have an assessment with that maybe engage with something of the key stakeholders around that as well and then in January through the budget survey work we would conduct an assessment of the potential support for the 10% tax or fee. And again we would return in February or March with results of this and put forward some options. Just as a note, if we were to move forward with a tax or transfer the tax option we would be doing polling presumably sometime in the fall of 2011. We would return to council with the ballot language in November of 2011 and then it would go with the general election sometime in spring 2012. If we were to move forward with the other options related to a sale or lease of the system again our best guess is it would be December of 2013. Prior to that we have an indicative budget of about a million to a million and a half dollars that would require for consultant studies, the financial, the legal the technical evaluations that would be required to consummate that transaction as well, but we would come back with a much more detailed budget and timetable at the February meeting, the February-March meeting. So that concludes our presentation, and we're prepared to answer any questions.

>> Mayor Reed: Thank you, I'm sure we'll have some questions. Councilmember Herrera, do you want to comment at this time?

>> Councilmember Herrera: Sure.

>> Mayor Reed: Come on up, you can stand or sit, your choice.

>> Councilmember Herrera: I may have to sit here. Thank you mayor, and I appreciate the rules committee letting me come and speak on this item. I think the memo is very well done. And Jeff as covered a lot of the issues. I guess what I just wanted to emphasize is as we're looking at this as a potential solution for our General Fund, I think we need to look at the kinds of negative impacts this could have on our General Fund. And that's really what I came to talk about today. So in 1988, in 1996, and in 2002, the years I'm familiar with right now, we have gone out looking at selling our leasing Muni water. The most recent was in 2002. We spent $1.5 million in that effort looking at it. I don't -- and the same issues that they were looking at back then are the same exact issues I'm hearing today. So I guess my message is I don't want to see us go down a rat hole, spend another $1.5 million looking at something we can pretty much figure out is going to end nowhere again. That is my major concern. I do think that there are options in the report that are worth looking at. I guess I'm just saying, too, the idea of leasing or selling I think has been almost litigated, looked at over and over again, and we've come back with these insurmountable issues. I don't want to spend $1.5 million looking at it again. The other things I wanted to mention too is in terms of the loss of Hetch-Hetchy water, which by the way supplies 100% of Alviso's customers, is a very serious matter. There is certainly no answer as to whether or not we would be able to retain that if we had any kind of a private entity involved in it. In fact it's likely we wouldn't. And there's a long list of cities waiting to get Hetch-Hetchy water. If we give it up, we'll never get it back. Also I want to mention that other cities, other large cities are not privatizing their water. It is not something that best -- that other players of our size are doing. And smaller cities that have done so, many have lived to regret it and have tried to get it back. So I don't know where I am in my two minutes. I'm not used to this.

>> Mayor Reed: We give a little more indulgence to councilmembers. Two and a half minutes. No.

>> Councilmember Herrera: The most straightforward way I believe is to take the option to the voters. If we didn't have proposition 218 on our way here we wouldn't even be talking about this because we were getting 3.3 million a year from a well managed utility that had excess funds that doesn't have any infrastructure problems, we were able to get that money into the General Fund. I'm certainly not saying that we shouldn't try to pursue that. I just think we need to go about it in a way that makes sense. It's my understanding, and I certainly would want Rick to weigh in on this, that if we did go to the voters with one of the options of looking at using some of the money and straightforwardly went out to them and said, would you support this, that it would be a simple majority to pass that instead of a tax. It is a much easier thing to do than trying to sell it or lease it. I've had some meetings at district to date, I've had some preliminary positive reaction to the idea of asking the voters straight out being honest with

them and saying we have a well run utility, we want to maintained control of our water but we would like you know permission of the voters to use some of this money to supply essential services. I think we can do it, I think it's winnable and that's what I think we should do. Let's learn from history. Let's not risk our general fund. Let's not waste $1.5 million chasing down a rat hole, thanks.

>> Mayor Reed: Thank you, Councilmember Herrera. I have a couple of questions. Since I was here for the vote of the council the last time the council considered trying to do something with Muni water, I'm working somewhat from memory and that was a long time ago. What I would like to get is somebody tell me when and where the staff report is for the work that was done then, when the council voted, I don't know what year it was, 2000-something. Because I started in November of 2000, so it was sometime after that. And the reason I'm going to look at that is the way I remember it is the council had a choice at that time of a lease-option or not. That the sale option was really difficult. And the reason -- and maybe my memory is wrong -- but the reason the council decided not to pursue the lease-option is that we were going to get $4 million a year transferred from Muni water to the General Fund. And that was more than we could achieve with a lease-option. That's the way I remember it. I could be completely wrong, but I would like to see the staff report. And then after we approved that, I don't know how long it was, maybe a year or two, when suddenly we realized that under prop 218 the rules had changed, we couldn't get a rate of return, and so we're down to the $800,000 a year overhead cost. So I think the council's decision would have been differently in 2000-whatever, if we had known there was no possibility of getting a rate of return, a reasonable rate of return, which we did approve, I see here in the staff report in 2003, the Muni code was amended to allow transfers to the general fund of 8% of gross revenues as a rate of return plus 2% in-lieu franchise fee. So somewhere in that time period the law changed, and we ended up with nothing except the overhead. And I, for one, can't ignore the fact that there's a possibility of getting some money for the General Fund. $2.5 million would be a reasonable rate of return based on current numbers. That's a fire station. A fully staffed fire station, $2.5 million a year, it's a couple of libraries. We can't ignore the possibility. We got to chase this down and the staff I think is doing good work of laying this out, and I'm going to support moving ahead the way they've outlined it. But it's an important issue even though we've looked at it in the past. The reason we keep coming back to it is because there is an opportunity that we sorely need. I had one other question about option C. Which is the offsetting cost related to the Muni water's use of the City's right-of-way, the appropriate rate of reimbursement. Isn't that essentially what we were trying to do with the 2% in lieu fee, in lieu of a franchise fee?

>> City Attorney Doyle: That be would be part of it. I think this is cost of for example cutting through streets and what's the impact of the City's rights of way and would be an appropriate reimbursement. Any franchise fee or in lieu of franchise fee would cover that, you would think would cover that anticipated cost. But in lieu of franchise fee was more along the lines of what other utilities pay and the other utility that pays a franchise fee is Great Oaks water. So it was basically making it akin to or the same amount.

>> Mayor Reed: Okay, but I'm just trying to figure out the scale of option C. It seems to me that the amount of money involved in option C would be substantially less than the amount of money involved in option A, which is getting voter approval for a reasonable rate of return.

>> City Attorney Doyle: I think that's accurate.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thanks. The mayor actually made a lot of the points that I was thinking. I had a question on option C too because it seems to me, not being a lawyer, that paying yourself to use your own right-of-way seems like maybe not the best legal justification to pay ourselves. It's kind of like I want to build a pool in my backyard so I'm going to pay myself to move the swing set to the other side of the yard because the pool's in my right-of-way.

>> City Attorney Doyle: And I think that's what needs legal analysis. I think the concept is to the extent the enterprise, ops General Fund for actual costs incurred this is the same thing, there is a burden on the city's infrastructure and it should pay its fair share.

>> Councilmember Constant: Okay, yeah. I look forward to seeing that analysis. Because that one of the three just seems kind of odd to me as a layman who doesn't know anything about the law.

>> Mayor Reed: One more question I missed. The letter from Violia, indicating they might be interested in making an up-front preliminary lease payment of $40 million or more to the city, which is interesting, good to know there are others that are interested. The staff did a present value of the sale of $116 million. That's in the first paragraph of the background. But we don't have a present value of a lease payment or a reasonable rate of return. It looks likes the for-sale thing would generate more money. But it's not clear that that's accurate. $2.5 million per year reasonable rate of return generates a lot of money per year that an up-front sale wouldn't. I'm just curious about trying to get this into something you can compare the options in terms of the --

>> Right -- I'm sorry -- that is part of our evaluation framework, is trying to maximize the financial value from any potential sale or lease. And the numbers that you see reflected in the memo are the numbers that were put in by San José water company. So they're paved on their estimate.

>> Mayor Reed: Okay. Councilmember Pyle Or Chirco, do you have anything to add? Councilmember Pyle?

>> Councilmember Pyle: I just have one thing. I noticed quite a discrepancy between the water rates for this company and San José water. So is that something that would be addressed, as well? How do you bring it up to a point where there's more equity?

>> That's a good question. I mean, I think that's part of, again, going back to our evaluation framework, the impact on rates and who controls the rates would be a key part of our due diligence. Again, what would be anticipated and what was publicized was that in order for this transaction to make sense, that a 29% rate increase would be anticipated.

>> Councilmember Pyle: And that would obviously have to be spread out over several years.

>> Be phased in, but the actual timing is subject to further notice.

>> Councilmember Pyle: Thank you.

>> Councilmember Chirco: Move approval of the staff's recommendation to refer this to the council on the 26th.

>> Councilmember Constant: Second.

>> Mayor Reed: I think the Revised date is November 9th.

>> Ed Shikada: Thank you.

>> Mayor Reed: So we got a motion to put this on the council agenda for November 9th with staff's recommendation. Further discussion on that? Mr. Wall, you wanted to speak.

>> David Wall: Of all the things politicians can be, well, cursed for, down right degraded publicly, is the sale or lease of a water utility. Staff has consistently, will consistently, for the future, always, undervalue how much money the municipal water system really is. I cannot fathom, with reliance on Hetch-Hetchy water, which will fail eventually, the management of water in this entire valley is not to be looked at from the Water District as a point of something to be copied. What we see here is the intentional crisis of water from toilet to tap. That's your only other source of water. Under no circumstances should you ever sell or lease a municipal water system. You will never regain control of it back, the infrastructure that is properly managed will collapse. Your ability to do anything in the city will collapse because you will create a de facto monopoly if it even passes PUC. Under no circumstances -- this is just the epitome of stupidity to even entertain an idea to do anything but retain municipal water and to be thankful that it is properly managed, one of the few things that the city has done right. Now, that is what you should argue about, why other portion of this city was specially our good friends off to the left here from OED and their reputation for losing money which we'll talk about later today, again, under no circumstances, entertain to sell or lease of municipal water at any time. Thank you.

>> Mayor Reed: That concludes the public testimony on this item. We have a motion to approve the staff recommendation to put it on the November 9th council agenda. All in favor, opposed, none opposed, that's approved. Our next item is to consider schedule for city council actions related to the California high speed train project for November 16th. Hans Larsen is here from the Department of Transportation.

>> Hans Larsen: Mr. Mayor, members of the Rules Committee. Hans Larsen acting director of transportation. As a follow up to the city council's meeting on September 14th, addressing the high speed rail project and specifically the design of the project in the Downtown San José area, we're recommending a follow-up county meeting to be scheduled for November 16th. The reason for that date is to allow for additional community outreach on an issue that's obviously very important to the San José community. Our memo outlines a process and terms in which we would make available to the public a completed draft communication agreement which we've reached with high speed rail in draft form. If this direction is approved, we would release that to the public later this week. The San José downtown association on September 29th put out a letter with many questions concerning the high speed rail project and the high speed rail authority has committed to responding to all those questions by the week of October 25th. So that will be out there in the public. We plan to have a community meeting about high speed rail the week of November 1st and so the intent is to have these two documents out, the agreement, the response to the downtown association, a public meeting, and then we would schedule the follow-up meeting with the city council. All of this is in advance of the high speed rail authority's next meeting that would consider the downtown design issues which is currently scheduled for December 2nd. I'd be happy to answer any questions that the committee may have.

>> Mayor Reed: All right. Councilmember Pyle.

>> Councilmember Pyle: Hans, have we ever, or do we have examples of trains that have been ditched, in other words, instead of going underneath, it would have to be a couple of miles, I guess, if it's ditched it basically muffles the sound a little more, and it's not as visible. So where are we with that?

>> Hans Larsen: I think -- I mean, there's a variety of ways which you can build high speed high speed rail: Elevated at ground, in a trench, or ditch, as you mentioned, or deep within a tunnel. I think the options that have been considered for the downtown area are either elevated or in a tunnel primarily because of constraints that we have that run through downtown. In this area we've got Los Gatos Creek that runs through there. We've got a light rail system, other utilities, and so the built environment in the downtown don't allow it to be built in a trench or ditch. So it either needs to be up above or down below.

>> Councilmember Pyle: Darn, I thought we had a good solution there.

>> Mayor Reed: Other questions or comments? I think this is a pretty good schedule. I'll give lots of sunshine for it, opportunity for councilmembers to seize things well in advance of having to make a decision. That's good. I know that our staff, transportation lawyers and others, have worked very hard with the high speed rail authority to get this draft agreement ready in a form to be made public real soon. And I want to thank the high speed rail authority, particularly Mr. Van ark who has said we need to do this, we need to do it in a time frame that makes sense for San José and so they committed the resources. And he can't really boss his lawyers around because his lawyer's the attorney general. So it's been helpful to have everybody engaged. Otherwise we wouldn't be in a position to do this. But they are going to respond to the issues raised by the downtown association and the other organizations I think that's a good thing and having a little more time to do that will be good for everybody. So I think we can get all this done in this timetable. Looks very doable. We need a motion I guess unless there's further discussion. Motion is to approve. I have a request from David Wall to speak.

>> David Wall: My own personal opinion of high speed rail, it's a loser to start. One you don't have any of your funding locked up. You don't know what it's going to cost the taxpayers. Two, you do have some idea what it's going to do to neighborhoods. It's going to destroy them. The whole entity about high speed rail is high speed. But they have to reduce speed to come into the City of San José. High-speed rail should just be focused where it has a straight shot, through the valley, all the way up to the Oregon border, and then wherever it goes from there. The issue here in San José should be, the expansion of the light rail. Not entertaining something you have no money for, that's going to cause complete destruction of the city. In addition what I don't like sun fairness here. Now our good friends from the Office of Economic Development have just left. They should have stayed. Because high

speed rail is contradicted to their problem -- to their whole program. It destroys all the things they've been working for. So without the funding guaranteed up front for this cursed thing, because it's another idiotic project, because it's not high speed, and it causes too many problems. But it's the money. You don't have any money. The federal government doesn't have any money. The state doesn't have any money. Who pays for this thing? And will it actually live up to what it's supposed to do? I think it will not. And I don't think you need to take on any more onto your platter outside of getting your finances in shape and taking care of the citizens of San José. High speed rail is a loser.

>> Mayor Reed: That concludes the public testimony. We have a motion to approve the staff recommendation of the schedule and getting it onto the council agenda. All in favor, opposed, none opposed, that is approved. Our next item is a request to approve a District 4 North San José business appreciation luncheon as a city and redevelopment special event.

>> Councilmember Constant: Motion to approve.

>> Councilmember Chirco: Second.

>> Mayor Reed: Motion is to approve. All in favor? Opposed, none opposed, and that's approved. Just to note for the record, we're not talking about spending money on this. In order to accept donations for this event we need to have this approved. So that's our last item of business except for open forum. Mr. Wall.

>> David Wall: I want to go quick. For additions to meetings, would I like to see a point on the committee for Community and Economic Development. I would like to see a proviso made that these folks in charge of developing our economy if they don't produce? Tell them life is tough, it's not fair. But if you don't produce, you're gone. Simple as that. You can't keep funneling money into this entity. Mr. Mayor, you referenced need for fire stations. Why don't you start looking at the government around you and start cutting it. Because your number one job, your sole job, is public safety. Paving the streets, which you talked about the other day, there should be a requirement for U.S. citizenship. Now another thing here, that's come up of late. You know we don't see the San José giants flag flown at City Hall. You've got the little sharks flag but they haven't won any championships lately. The San José giants have won two back to back championships. In addition their players who are on the San Francisco giants team are headed for the playoffs. The A's are losers, Mr. Mayor. The San José Giants crank in a lot of money into our economy and you should be thankful and grateful for that. Also, I think you should consider the need for military units and stockades. Because if you don't start taking public safety seriously, you're going to be begging the president for military police units, stockade infrastructure, and logistical support. Look at the depletion rate of San José police officers and the fact that the academy was closed under your watch. But still you have plenty of money for outside ancillary government functions. I particularly don't approve of such matters. But then again, I don't approve of that document with CPLE either. We'll discuss that. Oh, we haven't seen a ruling from our honorable attorney on the rights of property ownership, which that document states, on I think paragraph A, I have to look at the right page I saw it, but they published it themselves.

>> Mayor Reed: Your time is up. That concludes the open forum. That concludes our meeting. We're adjourned.