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>> Mayor Reed: This is Rules and Open Government Committee meeting for November 3rd, 2010. Any changes to the agenda order that we need to talk about? Nope, okay. First item would be the November 9th council meeting agenda. Any changes to page 1? 9:00 start of closed session, reflect the start of performance reviews?

>> Performance reviews.

>> City Attorney Doyle: Just for the record, this will be 9:00 for the next consecutive weeks until we're done. I think December 7th is the last one scheduled.

>> Mayor Reed: December 14th, probably have to start at 6:00 a.m. like we sometimes do, 6:00 a.m. might be a little bit early. Anything on page 2 or 3? Page 4 or 5? Page 6 or 7? On 8 or 9 we have the land use items. Any changes there? I have some requests for additions, proclamation for Sikh awareness and appreciation month, Councilmember Herrera, commendation to Jeff roach for his years as director of the jazz society from Councilmember Liccardo. And then we have a TEFRA hearing on a proposed bond issuance for the McCreary Courtyards apartment project, to add a resolution that we need to do. Any other request for changes?

>> City Attorney Doyle: Mr. Mayor, we are prepared to come back for council's direction with suspension of the supplemental retiree benefit reserve payout and that can come back next Tuesday, we'll need a waiver under sunshine, but this is a follow-up to a council direction. So one is a resolution and one -- and that's inform Federated and the other for Police and Fire it's for -- is an ordinance.

>> Mayor Reed: Okay, any other changes or additions?

>> Councilmember Constant: I'll make the motion to approve with the add and a sunshine waiver.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion is to approve with the amendment and the sunshine waiver, all in favor --

>> Lee Price: We need actually a ten day waiver both on the TEFRA item and the SRBA item.

>> Councilmember Constant: That's fine.

>> Lee Price: Thank you.

>> Mayor Reed: All in favor, opposed, none opposed, that's approved. November 16th council meeting agenda, anything on page 1? Page 2 or 3? On page 2 we have two presentations of an award from somebody else, to us? Can those be done with an information memo? We don't need to do them at a council meeting. Words have already been begin to us.

>> Mr. Mayor, for the agency we were hoping to just be able to have a moment to reinforce the agency's good accounting practices, open and sunshine. But if you would prefer that because of the agenda that we just do it with an info memo, of course, we can do that.

>> Mayor Reed: Well, either an info memo, or on the redevelopment agenda we can add an executive director's report item, would be a good time to talk about that.

>> That would be great, thank you.

>> Mayor Reed: Rather than treating it as a ceremonial. We'll come to that agenda in a few minutes. Anything else on page 2 or 3? Page 4 or 5? There's another TEFRA hearing on item 3.2. Are we okay on the sunshine waiver issues on that one? As currently scheduled? Okay, anything on 6 or 7? Page 8 we have the financing authority agenda. The property exchange. Any changes to that? Got some requests for items to add. Mayor and councilmember excused absence for Councilmember Chu for a league of cities meeting. And including a travel request for same meeting and Councilmember Chu's travel for Denver for national league of cities meeting. Any other requests for changes or additions?

>> Councilmember Constant: Move to approve.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion is to approve with the amendments. All in favor, opposed, none opposed, that's approved. RDA Redevelopment Agency meeting scheduled for November 9th, have we already cancelled that or do we need to cancel that?

>> Mayor members of the committee we do need to cancel that we don't have any items this week to add to the 9th but we do recommend cancellation. Just for the afternoon session, if there are any other closed session or others we'd have those.

>> Councilmember Pyle: Motion to approve.

>> Mayor Reed: All right, motion on those, all in favor, opposed, none opposed, that's approved. , November 16th, let's add something on there so we can get a report from the director on those awards.

>> We can do that probably after item 3 after the consent calendar for the executive director to make a comment.

>> Mayor Reed: Executive director's report, I think we ought to put that on there as a standing item like we have the City Manager's report on council agenda. Just add that to every meeting in case there is something we need to report out. I forgot what page I'm on, is there any changes? There are only three of them.

>> No requests for changes.

>> Mayor Reed: No requests for changes. Anything else?

>> Councilmember Constant: Motion to approve with the addition.

>> Councilmember Pyle: Second.

>> Mayor Reed: All in favor, opposed, none opposed, that's approved. Next would be upcoming study sessions nothing to discuss.

>> Lee Price: Actually Mr. Mayor we do have a draft of a special meeting for November the 18th from 9:00 to 5:00 in the council chambers. We wanted you to look at that, we could get it out for final approval, at least get it out on your radar and give us an opportunity to provide any feedback.

>> Mayor Reed: So we are looking at a schedule that runs most of the day.

>> Lee Price: Starting at 9:00, taking a lunch break from 12 to 1:00 and reconvening at 1:00.

>> Mayor Reed: Organize something for the councilmembers.

>> Lee Price: Thought I would have something brought in, grab a box lunch, and if you need to do something in your office, we could at least feed you and ask you to be back promptly at 1.

>> Mayor Reed: We'll take care of this next week.

>> City Manager Figone: That would be good. Right now we're in the detailed formulation stage, and this shows the council to give maximum flexibility if you want to have direction, I don't know if I have recommendations that would warrant recommendation, I don't know if you'll want it as a pure study session or a special meeting where you can take direction or give direction.

>> Mayor Reed: We don't need to take direction because we've already set the date. Looking forward to a whole day, getting ready for next year's budget cycle.

>> Councilmember Chirco: Move approval.

>> Councilmember Pyle: Second.

>> Mayor Reed: All in favor, opposed, none opposed, we'll look at it again next week if there are any changes. Legislative update. What happened yesterday in California Betsy?

>> Betsy Shotwell: Just a few hinges this.

>> Mayor Reed: We're expecting you to pull it together and explain it. 12 hours to figure it out.

>> Betsy Shotwell: Mr. Mayor, members of committee, Betsy Shotwell, Director of Intergovernmental Relations. I know the attorney general's race is still tight and they haven't declared yet. On the proposition level, I do want to report, the city's proposition 19, legalizing marijuana that did fail. The sponsor of the measure did say that he intends to make every effort to get it on the 2012 ballot. So Rick, tell your folks not to throw away the files. Because unfortunately -- I shouldn't -- it will be back, but -- I can assure you, but perhaps it will be better drafted. I don't know. Proposition 22 which would prohibit the state from taking local funds, Redevelopment Agency funds, transit funds that did pass.

>> Mayor Reed: What's the effective date on that and will it have any impact on the \$13 million check we're expecting to have to write in May?

>> Betsy Shotwell: Unfortunately, no. It goes back to a date in October of 2009, but that's following the state two-year take away, so that still of course remains in appeals. Janet and I were speaking of that, this morning, as

to what the status is, if there can be a decision between now and May. But I don't know if that's going to happen or not.

>> Mayor Reed: I'm sure that the lawyers for the redevelopment association are looking at the retroactive issues since they haven't taken the money yet.

>> Mr. Mayor, again, Janet Kerns, if I can just add, the California redevelopment association has a board of directors meeting scheduled for Thursday and Friday of this week which actually Harry Mavrogenes will be attending, so we can give you some updates after that.

>> Mayor Reed: Good.

>> Betsy Shotwell: Okay Proposition 23, which would have suspended the air pollution control law, AB 32, that was defeated by over 61% of the vote. And lastly, proposition 26, which would require two-thirds vote for state and local, for many or most state and local fees that did pass. So I don't know if Rick has anything he wishes to add on this.

>> City Attorney Doyle: Mr. Mayor, members of the committee, we are looking at what impacts that might have. That does have some retroactive effect. Off the top of my head I don't know of any fees that we have that would be impacted. We don't believe cost recovery fees are not covered by prop 26. The areas that we might have some concern about is, when we come back with some of the smoking regulations, and what fees the council may want to adopt, there may be some limitations similarly, plastic bag fees might be impacted. So we're looking at those issues but just stay tuned.

>> Mayor Reed: First one we have to deal with might be the regulatory fees for the marijuana, medical marijuana regulatory system that we're looking at.

>> City Attorney Doyle: Well I think we were intending to, good news is measure U passed and then we can impose a tax, council has the authority to impose a tax up to 10% which is a General Fund tax. To the extent that we were going to have regulatory fees, they were going to be strictly cost-recovery fees to administer the program, similar to our card room table fees. And I don't believe, in my opinion, at least, that is not covered by prop 26. Prop 26 is really the impact fee that the legislature is sort of used over and over again.

>> Mayor Reed: As have some other cities. Yes. Councilmember Pyle.

>> Councilmember Pyle: I just wanted to ask this burning question: None of the -- none of the measures that would have brought in income were passed. So -- but our state budget was predicated on the \$10 fee for cars and the parks fees. So we have to start all over again figuring out how we're going to get the budget under control, I would imagine. And --

>> Betsy Shotwell: Well, exactly. And many of these measures are because of the legislation that actually initially moved, this issues failed. And then they went to the ballot. Again, it remains to be seen what will take place for the 2012 ballot which will be a totally different environment, of course, than it is.

>> Councilmember Pyle: It is going to be quite interesting, because they can't scalp the cities anymore. It's going to be interesting to see where that money is going to come from, it's got to come from somewhere. Thank you.

>> Mayor Reed: Anything else on state? Federal?

>> Betsy Shotwell: Federal, as I'm sure you heard this morning, the latest I have is the Republican party won 63 Democrat-held seats in congress, while Democrats picked up three, which gives the Republicans a net gain of 60. So of course they are in majority. The senate lost a few but the Democrats remain in the majority although not with the 60 votes needed to overturn controversial motions on the floor. The -- again, as far as the few races that are still outstanding, Congressman McNerney's race as of this morning was still very much neck in neck with his

opponent, David Harmer, and so again, as of this morning, that was practically down to the same number of votes. But as far as the rest of our delegation, there is no unexpected changes. I do want to add that Patton Boggs just initiated a report, President Barack Obama and a closely divided 112th Congress, an angry electorate has spoken, now what? And I am going to get this out to you all as an info memo, very interesting perspective on where they see the next two years. Not only that, but congress will be returning on November 15th for their lame duck session. And what can take place between now and January 1st with regards to appropriations and a number of issues including the continuing resolution of the congressional budget whether they'll just do it for a month or two or whether it will go out into the end of next year. So all that's in play starting on November 15th. And we'll see how this goes out but I'll be getting this info memo out to you shortly.

>> City Attorney Doyle: Just one more note for the record, and with prop 19 failing, we will not be coming back with the moratorium. It goes away, and we would have a second reading of the ordinance next week, and there's no need for that. But we will be coming back with the prohibition as per Councilmember Liccardo's motion yesterday.

>> Mayor Reed: Okay. Councilmember Pyle.

>> Councilmember Pyle: I just had one more question because I didn't check it out. But what about the majority vote Betsy?

>> Betsy Shotwell: The majority vote?

>> Councilmember Pyle: I forget which one that was.

>> Mayor Reed: That is for lets say pass the budget?

>> Councilmember Pyle: It did pass.

>> Betsy Shotwell: It did pass. But again, that is just for the budget being passed with a majority vote. Any pieces in the budget that call for a revenue increase, that is still going to be bound by the two-thirds vote.

>> Councilmember Pyle: Understood.

>> Betsy Shotwell: So it kind of depends. You might see the budget take place more in a railroad parallel, where you have the budget passing but the logger jam issues, which have been the logger jam issues over the past six seven eight years are still there because they won't have the two-thirds vote. The issues on the table will be fewer but it remains to be seen how that will play out.

>> Councilmember Pyle: Thanks.

>> Mayor Reed: Anything else on state or federal? Okay, thank you for the report.

>> Betsy Shotwell: Thank you.

>> Mayor Reed: I needed to go back to the council agenda on the 8th. There was something I wanted to ask the staff about. Item 3.3 is the service delivery evaluation options for maximizing financial benefits from the San José municipal water system to the General Fund. Having read the staff report and looked back at the staff report from 2002, when I was on the city council, I think there's some data or factual information that we ought to get in front of the council when they're looking at this. And that is, what happened from May of 2002 until August of 2002. I know that the council directed the staff to basically go negotiate a lease with San José water company, they reported back that they were unable to do that. And I think why, what were the issues in the negotiations are important, since we're looking at reinventing the wheel here, maybe we'd like to know where we finished the last time we took a look at that. If staff could get an info memo out by Friday I think that would be sufficient.

>> Ed Shikada: Certainly, Mr. Mayor, we will work with the attorney's office. My understanding is that there were some issues that were discussed in closed session. So that on that basis, we'll need to evaluate how best to make that conclusion.

>> City Attorney Doyle: We'll work with the staff to make sure the council gets the complete information. If some of it needs to remain confidential we'll get that to them, but ultimately the council will get that information.

>> Mayor Reed: All right. So you can get out whatever information publicly by Friday in an info memo, and we can if necessary agendize it for closed session discussion with the other facts that may roll out.

>> City Attorney Doyle: We can decide if we need to bring it in next Tuesday.

>> Mayor Reed: Okay. Anything on meeting schedules?

>> Lee Price: Yes, thank you Mr. Mayor. I will bring back a memo next week for the committee's consideration. But I just wanted to mention that we're looking at having you cancel your regular meeting of November the 24th, which is the day before the Thanksgiving holiday ensues, you do not have a council meeting on that Tuesday, the 23rd, so I'll schedule the rules in lieu with your staff on that Tuesday morning at 9:45. And then the memo will outline some other regular meetings that we'll cancel in December pursuant to your council meeting schedule. So I just wanted to give you that heads-up.

>> Mayor Reed: So we're unlikely to meet during the Christmas break holidays, among others?

>> Lee Price: No meetings after December the 15th. So you'll have a council meeting on the 14th, Rules Committee meeting on the 15th, and then no meetings for the rest of the year.

>> Mayor Reed: Looking forward to that. Not that we don't enjoy these meetings. Public record, anything from the public record the committee would like to pull for discussion? I have some requests, a request to speak. The public record items, Mr. Wall.

>> David Wall: You might want to turn to item K. This is the weekly crime report of North 10th Street at Horning Street, about the shopping carts. But along the railroad tracks, which is part of it, we have action photos this week of our glorious fire department, which I'll put on the record later. But because of the burning down of the Savoy club which is a very suspect structure, which is another story you'll read about and of course San José metals itself is out of business for quite some time. I don't know how they're going to secure these structures but that's their problem. But our glorious firefighters did an outstanding job and we have a few photos for that. The other thing is, have an apology to make on the CPLE item I, you'll look at it, and this is a very crude thick. I'm not a desktop publisher. But I have for future editions, gotten orders of magnitude better. So the full report will be coming to you on the public record, so you can be made aware of it. And so the public can be aware of it and make a decision to tell you whether or not they like their taxpayer dollars being used for this farcical report. And let us mention right now that this is a racist report. They only focus on Latinos, but they don't say who a Latino is. They don't say if it is Mexicans or Guatemalans or Hondurans. And then white people, but there's no mention that the San José police are afraid of black people who are illegal aliens or Asian people that are illegal aliens or gay people that are illegal aliens or anybody else, it is Latinos and white people. So on its face it's a bigoted profiling to basically support their own public political agenda. So you should really give them a 60 day notice and tell the them to get out of San José.

>> Mayor Reed: Your time is up. Anything else on the public record anybody wishes to discuss?

>> Councilmember Pyle: Move to note and so forth.

>> Councilmember Chirco: Move to note and file.

>> Mayor Reed: Motion is to note and file. All in favor, opposed, none opposed, that's approved. Anything under boards commissions committees work plans or anything? None? Anything workload assessment or council requests and referrals? We have two items. One is, a -- recommendation by Councilmember Kalra that we direct the City Manager to extend the recruitment process for San José's new police chief into early 2011. We have a memo from Councilmember Kalra on that. City Manager did you want to talk about that first?

>> City Manager Figone: Sure, Mr. Mayor, members of the committee, I've talked to Councilmember Kalra. This so I don't think I'll be saying anything that he hasn't heard with all due respect. What I'd like to do is just talk a little bit about the -- kind of the governance structure that we're a part of and how that is set up, to really avoid politicizing recruitments of department heads. And the police chief although it's very high profile is a department head position, under the auspices of the City Manager and the City Manager's authority. Now, that said, I very seldom you know kind of start a response with talking about our structure but I do think that's important in this regard. And so there are safeguards in our charter to avoid politicizing the appointment of department heads. Now, the council has the authority to receive my recommendation under the advice and consent, so that's the confirmation process that you're aware of. And actually, we do bring to you a policy statement, where you concur with kind of the goals and the functions of the department and actually, also, a process that Del had set up, bring to you questions that you would like answered when I do bring the candidate to you. So there's the opportunity for council input and then also the confirmation responsibility. This request to extend the time line so that the new councilmembers could participate did come to me through the coalition of social justice and accountability. We are working very well together with them. And you have some members in the audience and so I just want to tell you that I personally feel that because of the outreach and communication we've been engaged in the lines of communication are open. And I am going to great lengths as are they to ensure that we really hear each other and the concerns and interest are factored into the process. That said, my response to them when they brought this to me is what I will tell you. Is I feel that I cannot manipulate the time line in order to achieve a political objective. Now, that said, we are, because of all of the outreach, and the stage that we're at, I think this will naturally roll over into next year, where the council's confirmation process at least will likely be in January. But that said, I am going to keep the process moving forward. So that we don't -- do not lose momentum with our candidates. And to ensure that my objective is achieved which is to bring you the best candidate that I

can, for your confirmation for our police chief. So actually, the request of Councilmember Kalra, and again he knows this, to direct the manager to delay the time line is -- goes against the charter responsibility of the manager. You can suggest, I can hear those suggestions. What I will tell you again is I think naturally it's going to happen. But I also don't want to lose good candidates because I've artificially delayed the process. And I don't think that's going to happen but that would be a concern of mine. So I'm happy to answer any questions, take your suggestions and I hope by now you know that I've been listening pretty closely to many, many interests in this process.

>> Mayor Reed: City Attorney, do you have anything to add to the issue?

>> City Attorney Doyle: No, I will echo what the City Manager said about, it is her function to do the recruitment process. I will note for the record that Councilmember Kalra's chief of staff came here last week and corrected the memo to not be direction but request, so that's -- but that's I think how it was taken anyway. At the end of the day, it is the manager brings forward a candidate and the council then decides whether to affirm the appointment.

>> Mayor Reed: Okay, Councilmember Constant.

>> Councilmember Constant: I just wanted to ask the City Manager, we've spoken about this individually. But there in my opinion there's no real benefit to waiting since we already know the results of the election. So I would imagine with your open communication process, there's going to be contact with these incoming councilmembers, as you go forward anyway, is that not correct?

>> City Manager Figone: I haven't thought that far ahead, councilmember. But you know, certainly I intend to outreach, and congratulate them, and let them know where we're at on a variety of key issues. So certainly, this would be one of those.

>> Councilmember Constant: I support -- well, I don't support the memo and I do support just letting the process continue. As it has been continuing. And knowing that there's still a lot of the process to go, and I think that we

should respect the guidelines in the charter and allow the City Manager to do her job, and when appropriate, we'll have our time to question, and give our approval or not.

>> Mayor Reed: Well, the guidelines in the charter are not really guidelines.

>> Councilmember Constant: Right.

>> Mayor Reed: Those are the rules.

>> Councilmember Constant: Outlines.

>> Mayor Reed: Outlines, okay. That's just the way the charter is. So I don't think we need to do anything with this. Obviously the City Manager has thought about this. There's a process, she's going to get it to a conclusion, and bring it to us for our role, whether requesting it or directing it, I think it's over the line on the charter issue and I don't think it's really necessary to move this forward. But there are some people here that want to speak on it. And if either councilmembers want to speak first if not I'll take public testimony.

>> Mayor, Stacy Fee, from District 2 Councilmember Kalra's office is here to speak on the item.

>> Mayor Reed: Okay, Stacy if you want to go first.

>> Good afternoon, mayor and councilmembers. Councilmember Kalra apologizes for not being here today so I asked me to say a few words on his behalf. Councilmember Kalra wants to make it clear that this memorandum is not intended to suggest that the input of the councilmembers who will be leaving office shortly is not extremely valuable in this process. He also wants to acknowledge the incredible amount of work that the City Manager and her office have put into the police chief recruitment process, not only the recruitment itself but the time and energy to ensure that the San José community is involved in the process. He is also aware that since there are only six weeks until the winter recess there is a good chance that a decision on the new police chief will not be reached

until next year. Extending the time line will create some certainty that will be beneficial not only to the applicants, but also the city administration, city council, and community stakeholders. The simple fact is that the council that will be working with the new police chief is not the council as it exists today. The relationship between the police chief and the city council is obviously an extremely important one. And one that will last for several years. The same can be said for the impact that a police chief has within the many different communities within San José. For these reasons, Councilmember Kalra strongly believes that the newly elected members of our city council must have a voice in choose going new police chief. Our councilmembers are elected by their constituents to make decisions just like this one and it is only appropriate that the council that will be working with the new police chief for years to come is the council that makes this decision. Ultimately all this memorandum is asking is to delay the decision making process for a few weeks so San José's new elected officials can participate in the crucial decision. Thank you.

>> Mayor Reed: David Wall, to be followed by Richard Conda.

>> David Wall: I'm challenged now. Normally, these matters are just routine to me. But because of this specter of impropriety with this Consortium for Police Leadership in Equity, as applied by we do not know who hoisted it upon the police department, because I've requested an investigation. We do not know if the City Manager did this, threatened the former chief of police with the job loss if he didn't go along with it, we don't know. We don't know if promotions to command staff were predicated the CPLE business. And so these issues should be ferreted out prior to the selection process to find out the sticky wicket associated with the CPLE report, why you have chosen to suppress it from the public, and how it may or may not apply to promotions within the police department. Now, we've heard talk or testimony that January would be a good time period. But I reject that. Because most people are still and city operations are still in the throes of vacations and whatnot. So if you do postpone it, March, preferably about the third week in March, would be appropriate, because everybody in the system of government is back to operating at full speed. But this business with CPLE is not going to rest. I can guarantee you, it will not. And it would be to your advantage to ferret this out and tell people what you've done and to come clean with it. And also to find out who's responsible, either the City Manager's office or wherever this think ended up, you're kind of required to do this. But that's my piece on this matter.

>> Mayor Reed: Richard Conda.

>> Richard Conda, executive director, Asian law alliance and a member of the Coalition for Justice and Accountability. So our organization, again, as city Manager Figone has indicated, has been having a number of communications meetings to discuss this matter. We are here in support of Councilmember Kalra's memo. We think the two new mess on the city council really need to have some input into this decision. They will be the members of the council who will be part of the council as we move forward with a new police chief. So we think it's important that those two members are part of that process and we again endorse Councilmember Kalra's memo. Thank you.

>> Mayor Reed: B. Mendez followed by Maria Fernandez.

>> Good afternoon, B. Mendez, with the coalition for Justice and Accountability, but also the chair of the Latino Democratic Forum. And I'm also speaking on behalf of Victor Garza, who could not be here today and he is the chair of the La Raza round table, as you know. Again we are supporting Councilmember Kalra's recommendation to you and I also want to again thank the City Manager for her graciousness in meeting with us over and over again, and sharing information, as she believes it's appropriate for us to have, and we really appreciate that at first we were like that but now we are kind of like that and would be even closer if you would agree to extend it at least until February. It's just a few more months, we would feel very good about that pressure being -- not existing. Bought even to January, it's going to be intense. And so moving it to February would really, really be a good answer. Thank you very much for listening and that's it.

>> Mayor Reed: Maria Fernandez.

>> Good afternoon. Can I just take this down a little bit? There we go. Good afternoon, mayor, council and committee, my name is Maria Noel Fernandez, also a member of the coalition for justice and accountability. I am here to express my support for Councilmember Kalra's request to extend the police chief recruitment process, in

an effort to make this process inclusive, transparent and representative of the needs of the community, we believe Councilmember Kalra's recommendation helps us get closer to these ideas. Just last week, we had over 200 community members expressing their needs and ideas with the City Manager and we thank her for being there with us. And we believe that this is just an example of the community's desire to truly be a part of this process and be represented by their councilmember. We want more time, we want our new councilmembers to have a say and we hope that what could naturally happen does actually happen through a formal process. Thank you. RF that concludes the public testimony. Councilmember Constant.

>> Councilmember Constant: I make a motion to deny.

>> Mayor Reed: We have a motion to do nothing, not put it on the city council agenda. All in favor, opposed, none opposed, motion is approved. Our next item are revisions to Chapter 12 of the municipal code regarding disclosure of fundraising solicitations. This is a return back from some previous discussion that I've lost track of but let the city attorney explain what this is.

>> City Attorney Doyle: I'll do a brief introduction and let my office take it from there, and then I think the City Clerk also may have something to say about it. But this is really in connection and sort of in response to a practical issue. You know that when you do fundraising solicitations you have to do disclosures. And the example is Councilmember Pyle's raising funds for -- to save Almaden lake, where the city could no longer support it, she sent out an e-mail blast and was successful in raising some \$35,000. And some concerns are maybe in some cases the council will want to have another exemption. There are already exemptions that exist under the fundraising solicitation guidelines and Lisa, I'll let you take it from there.

>> Lisa Herrick: Yes, exactly. As Rick mentioned, there would be an addition of two exemptions to what a direct fundraising solicitation means. The first would be an e-mail solicitation that specifically relates to a city program facility or service that goes to at least 200 e-mail addresses. The thinking of this is that 200 e-mail addresses or an e-mail blast to at least 200 addresses is not particularly direct, which is what the ordinance is intended to have be reported. What this would not capture is a request for any other sort of contribution or the donation that didn't

relate to a city program or facility. Some municipal purpose. I also want to say something about the amount of 200. It was selected somewhat arbitrarily. It is a number that the committee could make lower or higher at your recommendation from the full council. We thought it was a number to hold onto because that is a number that is at least in the political reform act is a number of some significance because it is what the mass mailing rules, that's the threshold for mass mailings. I will point out though, that to -- I think it may have been somewhat confusing in the memo, the e-mail is not subject to the mass mail restrictions or prohibitions at all. While we sort of borrowed from mass mailing, this is not a mass mailing issue. The other exemption is for a solicitation that's posted on a Website. So often you'll see sort of a banner ad with a donate now click that you can do. That again is something that doesn't seem particularly direct, and is sort of currently technology catching up with what I think was intended to be exempt from the ordinance. The third change would essentially try and catch your forms up with how the ordinance reads. Which is deleting the requirements that solicitations be reported, the date of solicitations be reported. The ordinance really requires that solicitations which result in a donation or contribution be reported, and so tracking solicitations don't necessarily result in a contribution or a donation. Is inconsistent with the ordinance and I think all of you can -- we understand that it's been somewhat difficult to track, and that sort of record-keeping, if it's not serving a particular purpose, we should fix it. And we would fix the forms if the ordinance were changed accordingly.

>> Mayor Reed: Anything else? First let me congratulate Councilmember Pyle on raising the \$35,000 with an e-mail blast. I've never seen money raised with an e-mail blast before. It usually doesn't work. So whatever you did was helpful. I guess people really love to swim in Almaden lake park, is probably the key thing. So I support these changes. I very much want to change the form which has bedeviled me since I started to fill it out because nothing happens as a bit of an extra administrative burden that produces no result. So I think these are good moves forward. Other comments? Councilmember Constant.

>> Councilmember Constant: Couple comments. One is, I also have not liked the forms. But there's a couple things I think that maybe we should perhaps make a distinction. I think that a request that is incidental to a communication that Councilmember Pyle's requested in her newsletter is okay to exempt but just because you do it by e-mail you shouldn't necessarily exempt it. Because you can do very direct and personalized mailmerged

style e-mails that are very specific for fundraising and all you need to do is have 201 people on it and you've kind of gotten around the rules. And it's easy to go through and pick 200 people that contribute on a regular basis and you know kind of target an audience of 201 people. So I think there should be some clarity around you know incidental to -- or secondary to another primary purpose or not the sole purpose of the e-mail and I'd like to see what my colleagues think. Because I do think those are two completely different things, the way you handled it through your newsletter versus sending out a specific targeted request for donation. The second thing is I agree that tracking through the reporting of when you report a solicitation for one period and report the contribution in another period has been a pain in the administrative portions of the office. But I think it is important to consider the data solicitation. And because the original discussion we had, when we talked about this, was solicitations for donations and how they may or may not influence council decisions. And if a date of solicitation is on Monday, the 1st of the month, and you get these commitments, and then Tuesday you are making votes for people that coincidentally happen to make those contributions, it just leaves the question, when did you ask for that? I think it's just good practice to you know if you're doing it by mass e-mail you know the date you sent it. So I think it would be appropriate to still capture that information. Maybe not report it two separate times on two separate parts of the form. That's a pain to deal with but I think noting that solicitation date is kind of behind the central purpose that we went to fundraising reports in the first place. So with that I just kind of want to see what my colleagues think.

>> Councilmember Pyle: My main purpose in bringing this up is the fact that the paperwork is daunting. I mean when you've sent something out to 5500 people and you are expected to name all of those people, that's -- I think that would be an unreasonable and unholy request. It would be a complete waste of paper. But we did make sure that the names of all who donated were mentioned. I mean do you really care who didn't?

>> Councilmember Constant: Right.

>> Councilmember Pyle: And that -- but I understand what you're saying councilmember, in that we don't want this to turn into a tool that can be used indiscriminately and put people at odds with their votes. These were neighborhood people, no votes involved. There was one that was not a neighborhood person, but I would

probably have to excuse myself if any of those people were on the agenda, excuse me from that item. But I doubt very much that that would happen. But I will make sure that I have a list of those names.

>> Mayor Reed: Vice Mayor.

>> Councilmember Chirco: To be honest, it's way too technical.

>> Mayor Reed: Well, pretty technical.

>> Councilmember Chirco: I will leave that to those that are more educated on the technology of it.

>> City Attorney Doyle: If I just -- I think aware of the committee's guidance is, that's what we're trying to seek. The reason we put forth the proposal of the 201 or more than 200 is sort of doesn't fit within what the intent of a direct fundraising solicitation. You're not just going to developer A B and C and say, can you pony up some money for this? I know you have a very sophisticated Website and probably newsletter, and Councilmember Pyle has a very sophisticated Website and newsletter. I don't know if that's the case for all 11. It was more an indirect solicitation more general to the milk as opposed to specific. Whether it was general or secondary, we can play with those means, that's the way we put in that fashion.

>> Councilmember Constant: Technology is only getting better and easier and way to be personalized and targeted and I just don't want to create a loophole that you can end up driving a truck through later, even though it's not necessary -- I'm not saying that was the case here but in accommodating something like this which I think is the appropriate accommodation to make, I don't want to open the door for unintended consequences. Looks like the ordinance has already been written up. I probably should have gave my input earlier but I think it's important that we address those issues.

>> City Attorney Doyle: This is merely a draft for your consideration before we send it to council.

>> Mayor Reed: If we were to send out a -- forget the technology -- a hard copy letter personally addressed to somebody for money, how would that be covered by this? Let's say I send out 250 of them.

>> Lisa Herrick: It would have to be reported, because it would really only relate to e-mail and then because actually because it would be by mail you would be dealing with your mass mailing concern.

>> Mayor Reed: What about if it was 190? By mail hard copy?

>> Lisa Herrick: Then you aren't dealing with mass mailing regulations but it is something that would have to be reported. Because this is specific to e-mail distribution.

>> Mayor Reed: So we have really the same issue that Councilmember Constant's talking about. If we do it in hard copy with a mailmerge, dear Sam, whatever, that would be covered. But if we did the same thing by e-mail that wouldn't be covered. But don't we also have a provision that talks about not a personal letter, but a fundraising appeal that's part of something else provision?

>> Lisa Herrick: That's correct. Actually, supplying names by the elected official to be used for invitations for a fundraising event, including the elected official's name in the letterhead or in the body of a solicitation letter, but which is not sent or signed by the official, so there are other examples that are already exempt. But if a councilmember is signing 190, letters then the intent even now is that those solicitations would be reported if they resulted in a contribution.

>> Mayor Reed: Can we treat the e-mails the same as the hard copy letter's language and not have a separate e-mail section, it's just if you send out a personal appeal, a direct solicitation by e-mail or hard copy, can we just treat them the same? Because the problem we have with Councilmember Pyle was trying to track the solicitations that didn't result in a contribution or to fill out the form which we're going to change because it's just not -- you know not needed. So that kind of solves the administrative burden of that. And this is a slightly different question.

>> City Attorney Doyle: Why and I think there's also a second prong which is related to a municipal program or service. And I think the reason why that's there is because with budget cuts, you may be trying to save a library or community center or something along those lines. So with the two prongs, maybe it works. The idea is when you are sending out things that broad you're not really targeting to a specific audience, you're trying to get more general solicitation and putting your name on something.

>> Mayor Reed: What we're trying to get at is that personal request, the direct appeal, whether it's done by phone which is the most likely way to actually get some money or by a hard copy letter, an e-mail, it is still the same personal request. If somebody gets an e-mail from me, on my personal e-mail, I don't know if it's better or worse than getting a hard copy letter from me but it's certainly that personal appeal. Why couldn't we treat the e-mail version of the appeal the same as the hard copy version of the appeal subject to the same rules? And then if we were to do that, how would that apply to the newsletter version that comes out to 5,000 people? Is that a personal appeal?

>> Councilmember Constant: I think that's where the incidental to another primary purpose, a newsletter has a primary purpose. And the appeal that Councilmember Pyle made was incidental to that, versus her sending out targeted mass e-mail specifically to raise money. That's where I see the distinction.

>> City Attorney Doyle: Yeah and when we talk about when we talk about the exceptions it is including the official's name in the letterhead or supplying the name on an invitation as one of many names and those are exempt. I think when you are sending an e-mail out it's coming from Councilmember Pyle or Councilmember Constant, and it's more direct in that respect. That's -- it's not just one of a few names on an invitation list or on letterhead with various public officials. So that's -- I mean we can -- so it is a little bit different but we can craft it. The whole idea is that's why we went to the 200 or more because it seemed similar to general blast and not just targeting specific individuals.

>> Mayor Reed: Pete.

>> Councilmember Constant: Let me throw some more monkeys into the wrench here. The other issue you know when you compare hard copy versus e-mail, e-mail also makes it so much easier to re-forward and sent off. It can have a much greater impact than a piece of maim. The other thing is, one thick we don't have here is perhaps a dollar threshold, I know that would add one more prong. But we don't have a dollar threshold in our municipal elections, we report name, location and employer, at every dollar up. In addition, you don't need to -- I don't know if that would make it even more complex. I think we should be looking at all these so we can really get after what we want to do, that is, not making every newsletter something you am relation to council actions.

>> Mayor Reed: Vice mayor.

>> Councilmember Chirco: I think it's gotten much more complicated than it should. I think this is a suggestion on a specific situation. And I think if -- while Councilmember Constant's ideas are not inappropriate, I just think this is a response to a specific question, and situation, and I think it addresses the problem that district 10 had. I think if there are additional issues we want to address that's a overwhelm different question. And I don't know it appropriate to be here without being on the agenda and letting other council people know that if it is a big topic of discussion, that we need to have a broader discussion than just the four of us at Rules. So what I would like to do is move approval of the staff's recommendation in this situation. And if there is additional, if that needs to be handled in a different format, so it's not just the four of us discussing it, but there is more conversation.

>> City Attorney Doyle: Vice Mayor, if the Rules Committee approves this, this would be forwarded to the city council discussion and approval and consideration.

>> Councilmember Chirco: That's what I'm saying, this was created to address a specific problem. And I think if we start changing this, that changes what the item is on the agenda. So maybe -- I just remember all that we did with the sunshine and I'm very concerned that we start unraveling something that leads to something that we're not aware of at this point. So I'm not sure how we could address Councilmember Constant's concerns. But I think this needs to move forward to council to take care of this problem and then maybe to revisit some of the items that Councilmember Constant has addressed.

>> Mayor Reed: Well, the simplest fix for this, the least amount of anything fix for the problem is just to change the DFR 1 form. Because it is the form that's driving the need to track solicitations to that eliminates this ambiguity about whether or not you need to track all that even though nobody solicits or nobody contributes. That would be a simple thing to do, and then we could continue to try to figure out how to deal with the e-mail piece of this in a way that doesn't create a loophole or destroy what we try to do with the personal solicitations.

>> Councilmember Chirco: I would really like to see that strategy followed, to take the simplest step for the solution we really want right now, and then maybe to look further at the e-mail. I just don't think staff or we are prepared to have that in-depth conversation that this seems to require. Because I certainly can't add anything to the conversation. I have no material to actually look at and try and be thoughtful about.

>> Mayor Reed: Pete.

>> Councilmember Constant: I don't necessarily disagree. But I think if we take action as the motion you are taking, that we are making a permanent change without having the full discussion, which is, as I was concerned, before when we've done these things we've had exhaustive discussions at rules and then went forward to the full council for discussion. I don't think we should go forward here, because it does change a policy that we've had for a while. And I don't think we've thought out all the potential areas. Another completely different thing that we would do is we could just provide an option for councilmembers to go to Rules, and ultimately the council, for an exception to the policy for specific requests related to city-related fundraising. That wouldn't cause us to change our ordinance at all, or we could do a combination of changing the form. I just think we need to do something comprehensive. But if we go forward the way this is now, we've changed everything, and that's where my concern is.

>> Mayor Reed: Judy.

>> Councilmember Chirco: Well following the mayor's recommendation, it was to change the form, not the ordinance. And then if there is additional work required on the e-mail, that would allow staff to prepare a more comprehensive rather than try and wordsmith this here, now. And I feel lost.

>> City Attorney Doyle: Okay. And so if on that, just to follow up on the form, the form can change, would require only disclosure to the extent that you have received moneys. And we're interpreting then the existing code section, since it's in the conjunctive, the and, fundraising and contribution, it requires both and not reading it as an or. Because as the form reads now, and so we could be consistent --

>> Mayor Reed: The form is wrong, in my opinion. It's not the ordinance that's wrong.

>> City Attorney Doyle: And we're just making sure -- the reason we had tweaked the ordinance as well, just to make it absolutely certain. But we don't have to change the ordinance, we can just change the form, if that's where you want to go with this, and hold the discussion perhaps for later.

>> Mayor Reed: Well, I think we could certainly change the form. That doesn't require council action, does it? That would I think solve the immediate problem while we continue to any out house to deal with the e-mail solicitation. That is an important question.

>> Councilmember Pyle: Your Honor, this was not part and parcel of my newsletter, this was a separate e-mail solicitation, basically.

>> Mayor Reed: Sent out to about 5,000 people.

>> Councilmember Pyle: Yeah, 5500 people. So just so you have that clarification. It's not an inclusion in the newsletter.

>> Mayor Reed: Okay. And how many people made contributions out of that? I mean, I bet you there are were lots of small contributions.

>> Councilmember Pyle: There were a lot -- a fair number of small -- gosh, I don't remember off hand. I would say at least a dozen, maybe 20 people, 25.

>> Mayor Reed: So the other thing we could do is, on those cases is, if -- why are we tracking somebody who contributes \$5? Kind of beyond the point of what we're trying to get at. We could put a threshold in there for contributions under \$100 or something like that. That would decrease the administrative burden, because it is an administrative burden to keep track of all this, but it's a lot easier if it's the larger contributions, because there's less of them. So do we need to take any action other than bring this back at some point, trying to deal with this after you've heard this conversation?

>> City Attorney Doyle: Yes, I think you can ask if we can come back with alternatives. But at this point sort of the indication is we should be changing the form at a minimum.

>> Mayor Reed: So do you want to make that a motor please?

>> Councilmember Pyle: Yes, change the form.

>> Mayor Reed: The motion is to change the form in the minimum. Any further discuss on that? All in favor, all opposed, that's paces. Taking us to the end of the agenda. I have nothing under additions to committee agendas or open government appeals. Open forum, Mr. Wall.

>> David Wall: I wanted to talk kind of quick, so it's not out of disrespect. First off, community and economic development meeting in which office of cultural affairs tried to put the bite on the city for another \$100,000 for a pilot project. My recommendation: Eliminate the office of cultural affairs and its entirety for its incompetence. The electric car issue, Mr. Mayor, you keep going down this path, but it's not the wisest path. Unless you have a power

plant, what's all these electric cars going to do to the power grid when people are recharging them? Solar power isn't going to produce the power that you are going to need. Their manufacturing is over in over in China, Japan, the Far East for these cars, you're not helping out the economy. They ship them over here using fossil fuel, that is another environmental problem. Start looking at other areas for your environment and your green vision such as farming. Nobody talks about food. You all think that Safeway grows this stuff overnight. San José is the last big city that has a lot of area to produce food locally, and that's going to spur your economy. In addition, look at around the city. There's trash everywhere. You need people out there picking up trash and growing things. So those things, you really need to get a grasp of. Another thing you got to pay attention to is another resource that you have that pumps in money to the economy, and you're very disrespectful for them. That is the San José giants. Those folks produced players for the world serious series and we know what and there. Economy, go to the World Series and let's hold some family entertainment in the city. But let's look at miniature farming here in San José. Can't get any greener than that. I just came from the garden today. I'm out of there playing, good stuff. I'll bring you some stuff from the garden. Dried apricots? You like those? By the way, isn't it terrible, Councilmember Pyle you go out and raise money and get nothing but grief. I mean I've been trying to get that garbage bill to where I could donate and where have I gotten? Nowhere. Keep up the good work.

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