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>> Mayor Reed: Good afternoon. I'd like to call the San José city council meeting to order for October 20th, 2009. We're still working on some of our equipment. But there's no reason why we can't start our meeting. Staff will figure it out, or not. Some of us remember the old days when we didn't have computers, monitors and screens to worry about. So we'll somehow get through. And we will do that starting with our invocation. Vice Mayor Chirco will introduce the invocator.

>> Councilmember Chirco: Thank you, Mr. Mayor. I would like to introduce the co-founder and president of the Hindu American foundation, Dr. Mihir Meghani. The Hindu-American foundation is an advocacy organization providing a progressive voice for over 2 million Hindu-Americans. The foundation interacts with and educates leaders in public policy, academia, media and the public at large about Hinduism and global issues concerning Hindus, such as the free exercise of religion, the portrayal of Hinduism, hate crimes, and human rights. By promoting the Hindu and American ideals of understanding, tolerance and pluralism, the Hindu-American foundation stands firmly against hate, discrimination, defamation, and terror. Dr. Meghani is a medical doctor for Kaiser permanente where he received the permanente medical group hero award and outstanding service to the community award for his volunteer medical work in the aftermath of disasters, including the earthquake in India, 9/11 terrorist attack, and the Sri Lanka tsunami. We are pleased to have you with us today. So close to the Hindu festival of diwali, the festival of light. Thank you for being with us today.

>> Thanks a lot, Vice Mayor Chirco, Mayor Reed and city councilmembers and everyone here today. I'm here to say a little invocation of Divali, and I've been asked to just say a few words about what Divali is. Divali literally means festival of lights. It is celebrated by Indians of all religious and racial backgrounds in the diaspora around the world. It's been a major festival, and for some, two days after Divali, Divali being this past Thursday, and two days after that being this Sunday, would have been the new year. It really symbolizes a victory of good over evil, of truth over untruth. A theme common to many, many cultures and religions. There are many, many stories behind Divali which I won't get into. It's great to have this observed here in San José, because this is the first major city to celebrate it formally, from a government standpoint, after President Obama celebrated Divali at the White House this past Thursday, which is a first in American history and really a proud and I think defining moment for the Indian American and Hindu American communities. With that, I'm just going to read you three meanings of different schlokas or sayings from ancient basic scriptures of thousands of years, and then I'll read them in Sanscrit, and then you'll get on to more important business of the day in San José. So the meaning that I'll be reading is, may auspiciousness be unto all, may peace be unto all, may fullness be unto all, may prosperity be unto all. May all be happy, may all be free from disabilities, may all behold what is auspicious, may none suffer from sorrow. Lead me from unreal to real, or translated as from untruth to truth. Lead me from darkness to light, lead me from mortality to immortality. Peace, peace, peace. These are the universal prayres that most Hindus do recite daily. In Sanscrit: [Speaking in Sanscrit] Thank you. [applause]

>> Mayor Reed: Thank you. Our next item is pledge of allegiance. Please all stand for the pledge. [pledge of allegiance]

>> Mayor Reed: First order of business would be the orders of the day. Are there any changes to the printed agenda? I have one request, and that is that the Rules report, 3.9, September 30th Rules Committee will be deferred a week. Any other changes? I don't have any lights here, so you're going to have to wave if you want something. Motion is to approve the orders of the day. All in favor? Opposed? None opposed, that's approved. Closed session report, City Attorney.

>> City Attorney Doyle: Mr. Mayor, the council met in closed session pursuant to notice this morning, no

report.

>> Mayor Reed: I'll take up the ceremonial items. I'd like to invite councilmember Madison Nguyen, Paul Krutko and Laurie Warda, owner of Alumawall, to join me at the podium. Today we're recognizing a woman owned business that helps drive the San José economy forward. Alumawall employs over 40 people. It's been recognized by the San José Business Journal as one of the most successful woman-owned businesses in Silicon Valley. Laurie opened Alumawall in 1984, a full-service exterior aluminum panel systems fabricator and erector system. Just happens to be in City Council District 7, and Councilmember Nguyen has some more to say.

>> Councilmember Nguyen: Thank you, Mayor Reed. In addition to what Mayor Reed has just said, Alumawall also participated in constructing several projects at the plan shopping center including Pet Smart, Target, and Best Buy. Alumawall's sleek look is not only in San José, but also can be found at Walmart in Sacramento, offices in Santa Clara and FPC office building in Walnut Creek. Alumawall works closely with the labor unions and works hard to keep providing jobs in San José instead of outsourcing overseas. In a time of economic recession they're setting a great example of businesses everywhere. I'm proud of the work Laurie has done and thankful to have Alumawall both in San José and in Council District 7. They are making a great difference in our city, and on behalf of the city I would like to say thank you. At this time I would like to -- Nancy, would you like to say a few words?

>> Thank you very much, councilmember. And just from the point of view of the Office of Economic Development, we want to say thank you for all of the years of business, for the loyal work you do, as well as excellence in design with many design product achievement awards, and we understand that you have many of your employees that have been with you 20 out of your 30 years. That's fantastic. Thank you so much. [applause]

>> Mayor Reed: We're going to do a little photo-op here.

>> Mayor Reed: Thank you, and congratulations. That's a long time to be in business in this valley and we appreciate it.

>>> For our next item I'd like to invite Councilmember Nguyen to stay here with me while Councilmember Kalra and representatives of the Hindu American foundation join us at the podium. As we present a commendation to the Hindu American foundation for their efforts in spreading awareness of Hindu culture in San José.

>> Councilmember Nguyen: It really gives me great pleasure to present this commendation to the Hindu American foundation. Since its inception in 2003, the Hindu-American Foundation has served as a progressive voice for over 2 million Hindu Americans around the nation. Today this organization continues to work tirelessly to raise awareness about issues that relate to the Hindu community and culture. Several years ago the Hindu American foundation successfully lobbied for congressional recognition of Diwali, or Festival of Light, important festival that is celebrated by Hindu, Jane, and Sikh Americans throughout the nation. And I'll let Councilmember Kalra share a little more about Diwali in a few moments, since I'm sure he probably attended a few of them this past month. This commendation is a testament not only to the work of the Hindu American foundation for the San José community, but it also recognizes the wonderful contributions Hindu Americans have given to our society. Once again I would like to extend my gratitude to the Hindu American foundation for all the hard work and with that I'd like to turn it over to Councilmember Kalra to say a few words.

>> Councilmember Kalra: Thank you, Councilmember Nguyen, for taking the lead in recognizing the Hindu American foundation. And first, I want to thank Vice Mayor Chirco for having Dr. Meghani to give the invocation. It meant a lot to me and I'm sure it meant a lot to Hindu Americans who have the opportunity to watch here today or watch in the future to see and feel that. I want to thank the Hindu

American foundation for the role that they play and for Dr. Meghani for the role they play in educating the community about Hinduism. A lot of us serve because of the faith we're rooted in. I'm no exception. My upbringing in Hinduism, I'm proud to be the first Hindu on the San José city council and to have this religion recognized, not just the religious aspects but the cultural aspect of it. And next Tuesday we will be having a celebration of Divali. As Councilmember Nguyen mentioned, I have gone to quite a few Divali parties and celebrations, which really remind me of the great celebrations we've had here as a child growing up. And so next Tuesday we will certainly invite everyone during the lunch hour to join us in the rotunda for another celebration of Divali, so thank you very much. [applause]

>> Okay, on behalf of the Hindu American Foundation, thanks again, we appreciate getting this commendation. The importance of San José to the community in the Bay Area, is quite great. In fact there are many organizations, Hindu and Indian, that are based around the Bay Area. Many of them in San José, but even for those that aren't based in San José, they're outside the San José borders, they identify themselves as San José congregation. So if you are on the websites of different organizations, it won't say that they're in Fremont or Milpitas, they'll say San José, even though they're outside the borders. I think that shows the openness of the city and the fact that there's so many people from different ethnic backgrounds living here. It's definitely a great place to live and work and do business, as well. Thanks again. [applause]

>> Mayor Reed: For our next item, I'd like to invite Councilmember Campos and representatives of the Alum Rock Business Association to join us at the podium. Today we are recognizing the Alum Rock Business Association for their work in sponsoring the second annual salsa festival. I've been there, and I'm not sure if it's about dancing or food. Because seemed to me both of them were going on. So we'll probably hear about that from Councilmember Campos, since this takes place in her district.

>> Councilmember Campos: I'm excited to be here this afternoon to recognize the hard work and vision and their tireless efforts of some of the most remarkable business community leaders in the City of San José. Today, we thank and recognize the Alum Rock village business association for successfully coordinating the second annual salsa festival. And it is both dancing and salsa food. Founded in 1984, the business association was established to preserve the vitality of the Alum Rock business community. But over the years the executive officers have devoted much of their energy and support to recreational and educational needs of the residents in the district. The annual light up the village, an event which is a fine example of their commitment as a business association, to bringing communities together in the district, to celebrate the holidays. This year, the business association celebrated 25 years of their leadership, and hosted the second annual salsa festival, drawing over 10,000 people, and not just from San José. All over. They continue to be devoted, and committed to the Alum Rock youth center, and a portion of their proceeds went to their success. We commend and recognize the Alum Rock village business association for their dedication to creating a positive relationship between the neighborhoods, the community, and their businesses. We recognize you and we congratulate you. Tilt I would like to ask the president, Frank Cortez, to come up and present his board members and ask Mayor Reed to present the commendation.

>> I'm Frank Cortez, president of the Alum Rock business association. I'd like to introduce my vice president, Lisa Regua and our secretary, Judy Thompson. And thank you to the community for coming out to our event. Thank you to Councilmember Campos for continued support of our community and thank you to the redevelopment agency and most of all, thank you to our former business manager, Theresa Faz, formerly with the redevelopment agency. [applause]

>> Mayor Reed: And we are joined here by Harry Mavrogenes, our executive director, Abi Magamfar, and Richard Keith who worked a long, long time to make this business district association in this district

successful.

>>> Now I'd like to invite Councilmember Constant and representatives from the Association of Vietnamese Elderly of the Bay Area to join me at the podium. Today as we recognize the Association of Vietnamese Elderly of the Bay Area for their dedicated work to support and foster civic participation among the elderly community in San José.

>> Councilmember Constant: Thank you, mayor. I'd like to introduce three members of the American Association of the Vietnamese Elderly Association of the Bay Area. We have Hung Mun Do, Vi Hu Wi, and Tu Yi Chan Tran. The Association of the Vietnamese Elderly of the Bay Area was established in 1979, 30 years ago. Over this time period they have provided a support network for the elderly in the Vietnamese community living here in San José. They promote Vietnamese culture and make connections between the cultures in the San José community. They have provided immigration, citizenship, and English language support services to thousands of the Vietnamese elderly upon their arrival here in the United States, and in San José. The elderly Vietnamese population in San José have strengthened their community by actively volunteering with the Association of the Vietnamese Elderly of the Bay Area. We're very happy for the work they do in our community on a daily basis, and we're proud as the City of San José to celebrate with them their 30-year anniversary. So today, the City of San José, the mayor and all my council colleagues hereby commend the association for their dedicated work to the support and fostering civic participation among the Vietnamese elderly community in the City of San José. Mayor.

>> Ladies and gentlemen, on behalf of the Vietnamese elderly association of the Bay Area, we'd like to extend our deep gratitude and thanks to the city council of the City of San José and particularly to Mr. Pete Constant and his staff for your report to help us in our activities. We already have 30 years of, you know, working, of participating in the community. We hope that in the near future, we have the opportunity to work together with another ethnic community to help the lives of the elderly in the Bay Area. Thank you very much.

>> Mayor Reed: We'll now take up the consent calendar. Are there items on the consent calendar councilmembers wish to pull to discuss? Councilmember Pyle.

>> Councilmember Pyle: Yes, Mayor, 2.4.

>> Mayor Reed: Any others? Is the equipment working now? Yes, it is. Councilmember Campos, did you have one?

>> Councilmember Campos: 2.10.

>> Mayor Reed: I have a request to speak, that's one of those already listed. Motion is to approve the balance of the consent calendar. All in favor? Opposed? None opposed, that's approved. Item 2.4, Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I cannot in good conscience quietly sit by and approve this item. I'm standing and standing to let the residents of San José know that I stand firmly against pornography in the firehouses or any other public buildings in the City of San José, where our employees are housed. And with that, I also would like to say I'm standing to show support for Ms. Leblanc, who showed a tremendous amount of courage to come forward with the issue. With that, I invite my colleagues to join me. I make a motion to approve.

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

>> Mayor Reed: We have a motion to approve the settlement in the LeBlanc matter. I have one request to speak on this, Ross Signorino.

>> Ross Signorino: Thank you, Mr. Mayor. You didn't see me standing. I'm not going to -- I can't vote on this. It's a shame that we have to pay out \$200,000 for a lawsuit of this kind. The material laying around. And I've talked to young ladies, young girls, at San José State, who claim that they have a great

deal of this material hanging around their dorms, and in the San José State area. What are you going to do, sue San José State the same time this material, no matter where you go, can you find all kind of material like this. And I just wonder, you know, how -- it's offensive, no doubt, the way women are portrayed, and so on. And what bothers me so much is the idea that we have to turn around and pay \$200,000. And there's been other lawsuits against us, too. I won't bother mentioning who they were but it's cost us millions of dollars. And somehow or another, people's sensitivities have to be satisfied with money, somehow or another. Instead of telling the child, you know, these things go on, you see these things all over. And so you have to maybe not adjust but it's in our society. And there's not much we could do about it. So therefore, therefore beside paying all this money out, the idea of understanding, that our society, you can't go to a movie, for instance, without seeing some sort of pornography going on in there, and there are somewhat given an R rating, and they get by with. So I think maybe San José is going to become known as the city of sue city sue, sue city sue, San José's the place if you want to sue city, sue.

>> Mayor Reed: That concludes the public testimony on this matter. I'm certainly going to support the motion. I just want the people to know that the City of San José has a policy against having pornography in the workplace. San José has a very strong policy on that. We also have a policy against retaliation against someone who would complain about pornography in the workplace. I'm sorry to say that there are few in the fire department that don't follow the policy and caused trouble for Ms. LeBlanc. Over 30-some years ago I started out my professional career investigating cases of race and sex discrimination, and I'm really disappointed that some people in the fire department have not lived up to the high standards that we set for behavior. It's regrettable that this incident happened, and I'm really disappointed that the union leadership has taken on the effort to resist the San José policy against pornography in the workplace. I think that will get resolved in the ordinary course, that we will continue to enforce our policy and that we will continue to respect the rights of any woman who needs to complain about something and prevent the retaliation that they might have to be fearful for. So with that I'm going to support the motion. All in favor? Opposed? None opposed, that's approved. Item 2.10 on the consent calendar. Councilmember Campos.

>> Councilmember Campos: Thank you, mayor I'm going to ask the Chief of Police, I'm sorry, fire chief to come down. The item we're looking at is east community, I know this is on consent. I wanted to pull this just so we could make a few comments on it, and you can answer a few questions, since we are going into the rainy season, we may not have as many fires hopefully in the hills but I think it's important for us to start planning for this, when the warmer weather comes. So chief, we know that this -- the foothills is probably one of the largers areas that our fire department handles in the City of San José or in the county. Fire station 2, I'm trying to think of what other fire station actually manages that particular area?

>> Darryl Von Raesfeld: Stations 19 and 21 also respond to that area on a first-to basis.

>> Councilmember Campos: Thank you. And so I'd like for you to explain how the fire department, in conjunction with our park rangers, because we know that Alum Rock is one of our treasures in the City of San José that is also in that plan. How do they work together in relationship to responding to fires when they first appear?

>> Darryl Von Raesfeld: Thank you very much, Councilmember Campos. Two ways I'd like to answer that first with the community wildfire protection plan. This started a couple of years ago with a lot of work from the park rangers as well as the firefighters out on the East Foothills and in Alum Rock Park. Because the wild land urban interface where the houses are with the wild land is important. So park rangers played a critical role in doing the assessment out in Alum Rock Park for this plan to be developed a couple of years ago. And they're also very intricate to first response to fires in the park area for several reasons. One, they know the area very well. They're first on scene when fires are small and carry some

water on their vehicles to help put small fires out before they get large. So they're an integral role of the first responders to work in Alum Rock Park to keep it free from fire and damage that that causes.

>> Councilmember Campos: And that gives our fire department time to get there where we're not losing time in addressing the fire.

>> Darryl Von Raesfeld: Exactly right. The earlier you can catch a wild land fire, the quicker you can suppress it at a small stage instead of it getting a lot larger. So it is important to have the eyes on the ground right there to see it.

>> Councilmember Campos: I want to thank you. I know passing this will give you and the mayor the leeway to go ahead and sign this so we can enter into a partnership.

>> Darryl Von Raesfeld: Yeah, I know, I thank you very much for doing that. Like I said, this is a couple of years in coming, this is prevention of wild land fires, and it helps to clear the areas. In fact, Mr. Allen Thompson from the Fire Safe Council is here. I think he has a card to speak for a minute to really say how much of an impact this will have on us to keep the place safe.

>> Councilmember Campos: I'll just make the motion and then we'll allow public comment, so I make a motion to approve this.

>> Councilmember Herrera: Second.

>> Mayor Reed: We have a motion to approve the recommendation and I do have a request from Mr. Thompson to speak.

>> Thank you. I'm Allen Thompson from the Santa Clara County fire safe council. I'd like to thank the San José Fire Department, who played the lead role, the lead fire agency, in helping us to put together this Community Wildfire Protection Plan and provided the technical direction for the CWPP. Cal Fire also participated but San José fire department took the lead role. San José fire safe Santa Clara County fire safe council is a 501(c)3 nonprofit county wide organization that helps us all from wildfires. The council is funded by federal grant and by contributions from companies, organizations and individuals. As the chief said, we started work on this plan several years ago. This is one of three community wildfire protection plans that we have for the most fire-prone parts of the county. Our primary programs are community outreach and education, including smoky bear programs for children in schools and in the San José libraries. And community wildfire protection plans like this one, and but what most of our federal grants are for are actually for fuel reduction programs. For example, this week we're doing several fuel reduction activities in the Lexington hills area which is the most fire prone part of the county. Unless there are more questions on the CWPP, thank you for promoting that.

>> Mayor Reed: That concludes the public testimony. We have a motion to approve. All in favor? Opposed? None opposed, that's approved. That concludes the consent calendar. Next item is 3.1, report of the City Manager.

>> City Manager Figone: Mr. Mayor, I have no report today. Thank you.

>> Mayor Reed: Item 3.2, report of the rules committee for September 23rd, 2009. I have a motion to approve. All in favor, opposed, none opposed, that's approved. Item 3.4 is the 2008-2009 annual report. And item 3.6, proposition 1A securitization. Which we're going to hear at the same time. If we will let the staff get in place. And they're prepared to present the report.

>> Jennifer Maguire: Good afternoon, Jennifer Maguire, Budget Director. I'm pleased to present you with a brief overview of the City's 2008-2009 annual report. This document does comply with the city charter and is the City Manager's vehicle for summarizing and analyzing the financial performance of the City for the preceding fiscal year. Throughout the report you will find it's a technical comparison of actual revenue collections as compared to actual expenditure levels in each of our budgeted funds and an explanation concerning material differences between these amounts. The report also includes a number of

recommended adjustments in almost every city fund. 2008-2009 I would mark as a good news-bad news story. I'm happy to say that there were no major financial problems in any of our over 100 city funds at the end of the fiscal year due to prudent budgeting and very active management of the many funds throughout the fiscal year. The severe economic downturn, however, did wreak havoc on many of our economically sensitive revenues. Many of them had very large unprecedented drops throughout the year. As a year in review, 2008-2009 did mark the seventh consecutive year of General Fund shortfalls. We did address a \$29.6 million budget gap in developing the adopted budget. We did, during the midyear budget review time frame, do additional rebalancing actions totaling almost \$160 million. Primarily in our housing funds, capital funds, General Funds, development fee programs and our airport funds and we also eliminated a net 141 positions at mid year. At the end of the fiscal year there was further General Fund adjustments necessary including a \$10.4 million drop in our sales tax estimates due to our third quarter receipts dropping close to 30% in one quarter, year over year. We did use our economic uncertainty reserve to help close that gap along with some other actions which was exactly why that reserve was put in place, to help offset unexpected large drops in revenue without causing other major rebalancing efforts to be triggered. Is 2009-2010 financial status is on close watch. As recently reported in our first July-August bimonthly report, we have several concerns this year going forward. Primarily in our sales tax, transient occupancy tax, development fee programs, our construction and conveyance taxes, other development related fees, and our airport activity. Rebalancing actions for our development fee programs will be necessary again this fiscal year. We are expected to bring forward a memo for consideration by the city council on November 17th. Likely reducing revenues another \$5 million. And I looked at it year over year we would have -- we will have reduced revenues about \$19 million, or 44%, in a one-year period in our development area. If necessary, we will bring forward any other rebalancing actions as part of our mid year budget review. At the close of 2008-2009 the General Fund did end the year with a fund balance of \$173 million and a relatively small positive fund balance variance of 20.2 million compared to the \$153 million we did use to build the 2009-2010 adopted operating budget. This level of variance represented only 1.9% of our \$1.1 billion budget. The additional fund balance was almost entirely the result of additional one-time expenditure and reserve savings of 19 million, as our revenue estimates or funding sources were within 0.4% of the budgeted level which obviously is fairly close. Factoring out dollars associated with our development fee program reserves and technical treeups that were approved by if city council last June and recommended in this annual report we -- the variance is really at 13.3 million dollar level for '08-'09 or 1.3% of the budget. The next slide shows the administration's recommended allocation of the additional Fund balance in the General Fund, starting with the \$20.2 million fund balance at a gross level we are recommending cleanup actions totaling \$6.9 million which we consider to bring the real fund balance to \$13.3 million as I mentioned in the previous slide. Those cleanup actions come in two forms. One is a reconciliation of our development fee programs as we treat those as mini enterprise funds within the general fund and we true-up our costs and our revenues, and also any additional rebudgets or cleanups to the rebudgets the council approved last June are also reflected in this category. The by far biggest component of this category is the recommendation in this annual report to rebudget our development fee program earmarked reserves, totaling \$4.3 million. We did not bring those forward in June because of the volatility in the revenue collections at the end of last year but we are now recommending to rebudget those reserves as they can stay intact going forward. Although we have only \$3.3 million available in fund balance based on the closeout of 2008-2009 and the monitoring of 2009-2010 we are recommending a limited number of urgent fiscal program needs totaling \$17.2 million that are funded by that \$13.3 million but also by a series of recommended program funding reallocation and reductions totaling \$3.9 million that are contained in this

report. I'll go into those in a little more detail in the next two slides. Also included in the report in the General Fund there were a series of net-zero adjustments to reflect new grants and reimbursements, many in our police department, and some very preliminary development fee program rebalancing actions. It's very important to note that for -- as a closeout of 2008-2009 with the recommended actions included in the report we do not have any funding available to carry over to 2010-2011 as part of our deficit reserve and this is the first time in ten years that we don't have any funding to carry forward or to put into our unmet infrastructure needs due to these urgent needs that I will talk about in just a minute. The next slide, as I mentioned, we do have \$17.2 million of needs recommended in this report. By far, the largest two adjustments are recommended to our sales tax revenue estimates and our economic uncertainty reserves with those two adjustments totalling about \$16.2 million out of the \$17.2 million recommended. Reduction to the sale tax revenue estimate of 10.7 million is recommended to bring the estimate in line with current projections of \$126 million. When the adopted budget was prepared it was assumed reductions for the past two quarters would decline about 10% for each of those two quarters, and then we would decline a total of 5% in 2009-2010 based on our best work in that area, although admittedly it's been a very, very hard revenue category to call. The last two quarters of the fiscal year ended with a -- almost each quarter with almost a 30% drop. So that's necessitating us to revise our sales tax estimate down to a more reasonable level that we think can hopefully be achieved. That -- year over year, our sales tax did decline 14.5% or went down \$22 million which was very unprecedented. An increase to our economic uncertainty reserve is the next recommendation in this report. We're recommending to increase it by \$5.5 million bringing the economic uncertainty reserve back to \$10 million which was the level recommended in the City Manager's proposed budget. As I mentioned earlier we had to use that reserve unexpectedly in June and we feel it would be a more prudent action to better position the General Fund for any further volatility in our revenues and bring it back up to the \$10 million level. The third need, and this is a daunting title, it is an increase to our vacancy/filled position elimination impacts reserve. It is sitting in the adopted budget at a \$316,000 level. We are recommending to bring it up to \$1 million to set aside funds to potentially address unbudgeted costs related to employee placement that occurred out of the '09-10 budget process and the fact that in many departments they're experiencing currently lower than anticipated vacancies. We have a very low vacancy rate in our city right now, we can -- citywide we have about two to -- excuse me. We have about 225 vacancies compared to a year ago, running around 300 to 400 vacancies. In the General Fund we're running about 126 vacancies and a year ago we were running 200 to 300 level. We do have a budgeted vacancy level in most departments and we're just not experiencing those vacancies. Many departments are experiencing personal services appropriation tracking higher than budget at this point. It will be the intent of the administration to put in cost savings plans in those departments that are having difficulty to try to preserve this reserve for carryover into '10-11 or for use in '10-11. But it may not be possible. There are a few small other adjustments contained in this report, basically to correct errors that were discovered in this budget after it was adopted or to reflect a true-up of the employee reduction actions that were taken at the end of the year. With the \$17 millions in needs and only \$13 million additional in fund balance, we were needing to scour departmental citywide expenses and capital programs in the general fund to come up with additional fund balance to close the almost \$4 million gap between our needs and our fund balance. We approached this exercise by identifying four major buckets in which we could categorize the rebalancing actions. The first was identifying alternative funding sources for projects totaling \$1.1 million where we could appropriately shift projects to other funds and appropriations with no impact to services or project implementation. The second area was to identify project savings or funding that was no longer needed. And we found it very difficult but we found \$1.5 million in that bucket. Again with no expected

service left impacts but we looked for contract savings, for bills that were potentially going to be lower and funds not needed. For example we didn't end up not needing our 2008-2009 state budget impact reserve that we had set aside last annual report and were recommending to reallocate that towards the economic uncertainty reserve. Third and our most difficult category was to -- we looked at reducing allocations. And we are recommending to do so for projects totaling \$1.2 million. These are where funding reductions may have a service impact, but we're determined to be prudent given the higher priority urgent funding needs. These are primarily fell in our I.T. area, reducing training costs, outreach and some reduced park maintenance reserve funding. The fourth bucket on there that is titled funding reallocations is for two projects where the departments requested to reallocate funding within their department to higher needs. One is to reallocate some funding to the economic incentive fund bringing it up to \$373,000. It used to be \$1 million a year ago. And to in the finance department area, in the City Auditor's office, are recommending that we do a public safety bond audit. And so we are reallocating some finance money to do that high priority project. Moving on to our special and capital funds, our construction and conveyance taxes which fund the parks library service yards and communications capital programs did experience a 24% decline in 2008-2009 to a total level of \$20.5 million, a level not seen in 12 years. If you look back on the chart it's 1996-97. Off our peak, as you can see in the chart as well in 2005-2006, revenues have dropped over 50% causing the capital programs funded by this revenue source to be significantly downsized over the past three years. Revenues continue to be tracking lower through the first three months of the year, so we may very well need to do some downward revisions again to these revenue estimates if collections do not start improving. This next chart shows our two major revenue sources that primarily fund the City's traffic capital program. The building and structures tax and the construction excise tax. Both revenues also showed significant declines compared to the prior year levels and reflect the lowest collection levels in the past 14 years. We had to go back because the chart didn't go back far enough, to 1994-95 to where we experienced these collection levels. Both revenues are anticipated to possibly be revised downward at mid year, as the collections through September have been extremely weak. Our Department of Transportation is developing contingency plans for the capital programs. A few selected special funds performance. In the airport area, to recap the area for airport, airport passenger activity decreased 15% year over year to 8.8 million passengers. The funds did finish with additional fund balance due to careful management and expenditure savings. The airport is budgeted for another 7% decline this fiscal year, but they are unfortunately tracking above that level and currently looking at drops of about 17% this fiscal year. We hope that picks up. The transient occupancy tax fund, although it came in very close to our revised estimates Kerr were year-over-year down 20% over the prior year level due to the drops in average hotel rooms and occupancy rates during the year. And in our convention and cultural affairs fund, we did end with some additional fund balance which was good news. Due to higher revenue and expenditure savings we are recommending in this report to restore about \$1.5 million to the nonpersonal equipment allocation for Team San José to run the city's convention facility, and with the fund balance in the fund still being consistent with the plan of finance for the potential convention center expansion project. There are a series of other recommended actions in the annual report as noted on this side. We do fund balance reconciliation through every fund and rebudget adjustments. We are proposing amendments to the city council budget policy as approved by the city council and as part of the June budget message for 2009-2010 that does provide more flexibility for additional fund balance with respect to the unmet infrastructure needs of the city. Unfortunately we're not able to use that flexibility this fiscal year, but it will be a very good for the long term health of the city. As recommended by the city attorney's office we are recommending a technical adjustment to our fees and charges report related to subpoenaed officer courthouse fees. And finally we are recommending participation in the proposition 1A securitization

program to offset State borrowing of our property tax revenues of \$20 million. That was included as a separate agenda item. Julia Cooper, our assistant finance director, will provide you a brief overview of that program in just a moment. My final slide is our next steps through February. We will continue to diligently monitor the 2009-2010 budget for all of the City's funds including both revenues and expenditures and bring back appropriate rebalancing actions as necessary. The first as I said -- those will be beginning in November with our development fee program rebalancing actions. Also the actions that are listed here through February, they are scheduled to prepare the organization for what is in store to begin a very difficult upcoming budget process for 2010-2011. With that I'm going to turn it over to Julia Cooper from the finance department to provide a brief overview on the Prop 1A securitization program, and then staff is available for questions.

>> Julia Cooper: Good afternoon, mayor and members of the city council. As you know, first, the Stae Legislature suspended Prop 1A when they approved their budget, and which allows them to borrow, or essentially we get to lend to them 8% of our property tax revenues. The impact to the city is about \$20.4 million. The state's constitutionally required to repay that loan within three years with interest and it takes priority over all obligations from the state except for support to schools and general obligation debt service. There was some pending legislation that needed to be approved by the state legislature in order for the securitization to go into place and it was approved by the legislature last week and signed by the governor last night. So we're all clear to go ahead and participate in the securitization program. So what happens in the securitization, is the state will take the prop 1A property tax funds as permitted, creating a \$20.1 million receivable that the state owes the city. Then what we do is sell that receivables to the California communities. They take all the receivables around the state, and right now there's over 1100 agencies throughout the state participating, totaling \$1.5 billion. So obviously there's lots of other people around the state that think this is a great idea. So they bundle all of this together and they sell a big bond issue, really big one. What happens then, once the proceeds come in, on January 15th and May 3rd of 2010 we will get three disbursements and the city will receive in total the \$20.4 million that the state borrowed from us. We don't have a hole in this year's budget, we don't have to wait for the three years when the state is supposed to pay us back. There is no cost to us to participate. All the interest and issuance cost will be paid by the state. And there's no restriction on how we can use the bond proceeds once they come in. So this is the best way to help keeping our budget relatively intact related to the state's take of the \$20.4 million.

>> Jennifer Maguire: We're ready for questions.

>> Mayor Reed: Okay, thank you. I have a couple of comment and a question. First I want to congratulate the staff and the City Manager and the rest of our staff for giving us a much better report than has happened in the last decade. Because your estimates and your work has been right on the money. This plus or minus 2% variance, in our predictions has been something -- this isn't the first time that I know you've done this but you consistently do it so you've set a very high standard and I really think that's important. Things of course are not nearly as good as we would like them to be. And we have to just accept the reality that sales taxes are going down, and other things are happening that we have to deal with. It takes a lot of work to manage all the funds. I forget how many funds there are, but there are a lot that you have to balance, not just the General Fund but all these others as well. So I want to congratulate the staff on really stellar performance. I had one question that maybe you mentioned and I missed it. And that was the net change in employees. You mentioned the mid year adjustment and then we had other adjustments at the end of the year. If you netted out the total FTEs, full time equivalents, a year ago, and then where we ended up a year -- I've seen the number but I just wanted to have you let everybody know what the number is, because I can't remember what the number is.

>> Jennifer Maguire: Year over year, we lost -- let's see, we lost 148 positions in 2008-2009. And then we lost part of the balancing of 2009-2010 another 221. We're sitting at a little over 6600 employees right now.

>> Mayor Reed: So 6600 employees, and that's down from our peak after the dot-com boom?

>> Since 2002-2003, we've lost 830 positions and that's citywide.

>> Mayor Reed: Okay, that's a lot of people, a lot of services that we can no longer deliver. Councilmember Constant.

>> Councilmember Constant: Thanks. First, I wanted to echo the mayor's comments. It's, while most of the news is not bright, as far as the money coming in, it is nice to see how close we got to a very rapidly moving target. And if we could just figure out ways to deal with all the other issues in there we'd be a whole lot better off. I just wanted to point out a couple of things. First, on the annual report, it concerns me, and I know we can't do anything about it right now, but once again, we're not putting any money into the deferred infrastructure. Which is just -- I just want to keep saying every time I have the opportunity, that that's, I think, going to be the biggest problem for us in the mid term to long term because of all the short-term actions that we have to continue to make as we work through these budget issues. I just had a quick question. I know that we have been talking about next year. We haven't even finished this year, and we're worried about next year. And the latest number we've heard is about the \$91.5 million deficit that's projected. I'm assuming that includes updates based on some of these numbers that we've seen like the sales tax falloff of the 30% and all the other numbers we've seen in here or are we going to see another revision to that number based on follow-up from this information?

>> Jennifer Maguire: You will see the latter. You will see another update to that number. We're working on that right now.

>> Councilmember Constant: Okay.

>> Jennifer Maguire: And I'm hoping by the end of next week we'll produce a new forecast for 2010-2011 based on our preliminary information and economic outlook. So we're going to go through every single program, every single of the fined estimates in the General Fund and look at every one of them and come up with a new number.

>> Councilmember Constant: Okay, thank you. Just a comment on the securitization. Obviously it's a good deal for our city and something I think we need to participate in but I really have some concerns as we look at the state level that it's just a series of shell games all being played at the same time. Where no money is really being added or subtracted, it's all being moved around. And we have a state that can issue bonds but instead of issuing bonds takes money from us, creates this third party, to do a series of bonds that they can pay, and it's just a big shell game. And I think that one day, this house of cards is going to collapse, and some could say it's already collapsing, but I don't think we've come anywhere near seeing the impact we're going to see just a short time down the road, because accounting tricks and smokes and mirrors and shell games only go so far. So I hope we see some real changes in how the budget's being handled up there. But specifically to this, what happens if, and what's our plan for, a possibility that these bonds don't sell? We have a state -- they may be relying on the credit rating of this newly created entity that's dealing with it but investors aren't stupid. Anyone can read one of these reports and see that it's a new creative way for the state to borrow money. I think it's one thing we have to be prepared for. Looking at the list of target dates which is on page 5 of 7 of the first memo, what do we do come January 1 if these things don't sell?

>> Well, the bond issue is scheduled to sell in late November so we will know sooner rather than later if there is a problem. We don't expect that there's going to be a problem. Bonds will sell, generally there's a market, just the right interest rate. So -- and there are investors that have a lot of confidence in the state

of California and their ability to repay. And this is a high priority in terms of the water fall with respect to their obligation to repay.

>> Jennifer Maguire: And if I can add, so what would be our backup plan? We would look to do some internal borrowing from other city funds. We have come up with a preliminary list. It was very, very difficult with all the restrictions on our funds but we do have a list of funds as a backup plan. But would prefer not to have to do that, if -- and hopefully this will pass.

>> Councilmember Constant: So we just roll into the plan B that's talked about here, we're just a couple of months down the road, a month or two? Okay. Well I hope that we're right and the state's right and somebody has confidence to buy these because I just worry about the smoke and mirrors. So I think it's good for us and I don't know if we're ready for a motion. But if we are I'd make a motion to accept the report, and to adopt the resolution approving the securitization.

>> Mayor Reed: We have a motion to accept the report and approve the securitization. That's 3.4 and 3.6. I do have some requests from the public to speak but we'll take those in just a minute, on both those items, 3.4 and 3.6. Some more questions from councilmembers first. Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. There will be a direct indicator of the percentage. What is the percentage that they're promising on the bonds? In other words, people will be more likely to buy the bonds, not only is it a good tax writeoff but it's a good percentage.

>> I'm not aware of what the rate is, it is set in the end of November.

>> Councilmember Pyle: In the 6% range?

>> It will probably be somewhat lower that because it is only a three-year term bond.

>> Councilmember Pyle: That would make a difference.

>> Yes.

>> Councilmember Pyle: I was told, never in writing, the last two quarters of sales tax are really down, 21% and 28%, I think, would that be accurate?

>> Jennifer Maguire: That is correct. We wrote about it as part of our July-August bimonthly finance report. The quarters were 29.3% for the third quarter but the first economic activity from January through March. Then the April through June economic activity period we were down another 28.2%. There was a problem with a posting from the state board of equalization so economically we're down in the 22% range. So yes, you're correct, two quarters in a row in a cash basis almost 30% down.

>> Councilmember Pyle: So when you say 17% overall, that's taking into consideration the rest of the year and those figures would portend to more of a problem in the next six months or so if that trend continues.

>> Jennifer Maguire: If that trend continues. Going forward, why we feel that recommending that our sales tax have a year-over-year decline of 5% rather than something larger is because of how the -- is all year long, every quarter had negatives last fiscal year. So we don't -- we think we hopefully are starting to bottom-out. So the best guess we have right now, it is an extremely hard revenue to predict right now.

>> Councilmember Pyle: Absolutely and if we're 5 or 6% anybody could say well, you know, that is a problem but who would expect this? And I can tell you too that at the VTA organization they are just reeling from the effects of this as I'm sure other cities are as well who have similar problem. I think that pretty much took care of it. You already addressed Councilmember Constant the likelihood of the bond passing. There is a marketplace out there so I don't think that's too much in jeopardy. But my question is this: We are also talking about getting some bonds out there as a city. And I don't know if that the Yin and the Yang of that is problematic.

>> No, I mean it should be -- there's a lot of bonds in the market every single week. We shouldn't be in competition with the State if we tend to be in the market. But we would look at the calendar to the extent

that the city or the redevelopment agency would plan to be in the market, we would avoid being -- probably selling the same week as the State.

>> Councilmember Pyle: Thank you mayor.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. I wanted to echo the praise and thanks for your hard work. We know this is an incredibly challenging time for everyone and your efforts to get us through. I -- Pete took a couple of my questions and I appreciated your answers. I know that the state's on the hook for all the interest. Is there anything in the securitization program that imposes any potential risk or cost to any of the cities?

>> No.

>> Councilmember Liccardo: Fabulous! Sign me up! What -- why can't, I know it's not just cities participating, it's also a lot of agencies. Why can't our redevelopment agency participate?

>> Julia Cooper: Because the take from the Redevelopment Agency is not a loan. It's a permanent take.

>> Councilmember Liccardo: It's a take. Until the lawyers or judges tell us otherwise, we hope.

>> Julia Cooper: Correct.

>> Councilmember Liccardo: Okay, that's helpful. I was looking at page 15. I guess I'm sorry, little Roman numeral 15. It refers to the reallocations and reductions. About a third of that \$4 million that was reallocated to help us close a gap came from what was called alternative funding sources, that's that paragraph in the middle of the page, Roman numeral 15. And as I recall, Jennifer, I think you said there wouldn't be any impact in service levels and that's reflected in the text there. But then when I look at the items that are listed there it looks an awful lot like items that relate to service that we all want and need. Street light repairs, traffic sign replacement, traffic safety infrastructure, pavement, markings, things like that. What exactly do you mean by there not being impact on service levels?

>> Jennifer Maguire: For example, we are keeping the programs intact. We're just -- we found an alternative funding source that's profit and legal to fund these items. For example, the maintenance backlog money that's been funded out of the General Fund. Because we ended the year a little bit higher than expected in the construction excise fund, we reallocated those dollars over to the construction excise fund. So those projects will proceed, now you know as this is a moving target now the construction excise fund is having challenges so we may have to look at some rebalancing actions over there. But for right now at the time we were preparing this report, that's a perfectly legitimate place to fund these traffic expenses, they are traffic related and we put them over there. Some of the other funds, I think -- there's a project that is in the Mayfair summer aquatics program, some in the bond fund, we can legitimately fund that, serving from the General Fund over into the bond fund, so there will be no impacts to these programs.

>> Councilmember Liccardo: Great, thank you, that is very helpful. Looking at the sales tax numbers that Councilmember Pyle referred to, and she's right, VTA is really feeling it, as all transit agencies are right now. Many of them are dependent on sales tax revenue. I recognize that we had something of a fiscal face plant last year, but looking forward with the cash for clunkers program, do we expect significant bump in the first quarter of 2009-10 fiscal year?

>> Jennifer Maguire: I think there was a temporary help in our sales tax related to the vehicle sales but from what I've read and we've learned it was very short-lived and the same dealerships are back to struggling with their car sales. So it obviously will be in our numbers but it was not an ongoing effect. And hope it will boost it up a little bit. But I will -- the dollars will tell when we get them in.

>> Councilmember Liccardo: Thank you.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. I also wanted to thank Jennifer and the City Manager for the wonderful job. And it's really nice to see that the City has an additional \$20 million to spend. My question is, how can we get more community input regarding to how do we spend the \$20 million? I mean, how can we -- if we're expecting an ending balance of \$20 million or more every year, can we modify our policy so how we spend the 20-plus million dollar can be folded into our overall budget discussion?

>> Jennifer Maguire: You certainly could do that. The policy right now calls for us to take care of rebudgets, and to correct any errors or any technical adjustments in the budget. And I would argue that the -- fixing the sales tax estimate and the other recommended items that are on here are just necessary fiscal actions. The policy right now just calls for not really spending on any new initiatives, just carrying over anything left over. A year ago, we had 4 million to carry over and to preserve that funding for the next fiscal year, which certainly the community is involved with that process of where the funds would come into play.

>> Councilmember Chu: And another one, I'm really concerned about the state taking about \$75 million from the RDA. Understand that RDA is coming up with their annual budget within a week or two. When we work on this annual report, have we taken into consideration of the fact that RDA may no longer be able to provide the same level of sets of to our city as it has in the past?

>> Jennifer Maguire: No, this annual report does not take into account any impact from the RDA budget balancing actions. We are working closely with the RDA. To the extent that they need to cut the support services to the city, we would look to replans and not fund those city support services. But we need to determine what that final number is and we will come back to the city council with recommendations to rebalance that part of the budget. So I think you know, we do have -- and we do have our economic uncertainty reserve but those would be ongoing problems that would just add to our own \$91 million problem, which that number is soon to change. And it will be ongoing problem for the City's general fund without taking some sort of corresponding expenditure reductions to rebalance.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. I wanted to thank the budget office for their work and I want to always thank you for being extremely responsive. Thank you. I wanted to say that I feel that reserves or any ending fund balance should always go to reserves, that's a prudent and pragmatic thing to do. Because if you go out and spend it, it will be gone. And then the day we'll need it, it's not going to be there. And I think that's very, very easy to do in this position. And finally, to Councilmember Constant's position, it's a darn shame the State has to drag cities into the accounting gimmicks of taking money and bonding it. That's just a waste of money, just through the whole bond market process. I mean, either figure it out, don't figure it out, don't drag it influence us. Thank you very much because I know we have a capable finance director to handle the challenge but thank you.

>> Jennifer Maguire: I did want to mention, I didn't have specifically in this presentation. The state obviously has continuing troubles and we all need to be concerned that they may still go over our gas tax revenues in the general fund. That does total \$16 million. And it was just the eleventh hour they did not take that money from the city. So we are actively monitoring that situation, and I just don't think we're free and clear yet. I don't know if we ever will be.

>> Mayor Reed: As long as the state legislature is in session, we have to be fearful. We'll take public testimony at this time. Bob Brownstein.

>> Bob Brownstein: Mayor Reed and members of the council. With this report we find that the city has an excess fund balance of over \$20 million. Now almost more important than the specific size of the excess fund balance is in the report the City Manager acknowledges that producing an excess fund

balance of this scale was deliberate. The report states, "It has been the annual goal to end the year with a minimum of one to 2% in additional General Fund, ending fund balance, above projected levels." That's 10 to 20 million. I have some questions about this practice. Who knew that this was the City's goal? Last spring when services were cut unions were giving back raises and workers were being laid off, why was the public never told the city intended, intended a 10 to \$20 million surplus the next October? Why is there no mention of this goal in city council policy 118? Which is supposed to govern the operating budget. A goal that essentially pulls ten to \$20 million out of the budget to be decided in the next October, that kind of goal deserves full scrutiny, in public, and a debate and discussion by the mayor and the members of the city council. During the budget session last spring, hundreds of citizens were here saying how they thought the City of San José should spend its money. Where are they this afternoon? Is it because they no longer care? Is it because this kind of practice takes this kind of decision, about 10 to \$20 million and takes it out of the public eye. That is just the opposite of open and transparent decision making. And if the city council supports this goal, you should debate it on an agenda item, let the public talk about it, and let us all know this is City's objective when it does the next budget hearings. Thank you.

>> Mayor Reed: Ross Signorino.

>> Ross Signorino: Thank you, Mr. Mayor, members of the council. I thought for sure there would be more people speaking on this, but I'll take their place, I guess, since there isn't so many. It's amazing to hear that you have something like \$20 million surplus, somewhere along the line. I won't try to elaborate on it, because I don't think I understand it completely. But I try to spend any money I spend in shopping, I do all of it here in San José, as much as possible. Because in order to help the city, and I realize that the taxes are needed here. But you know, I think too, you have to watch what you're going to be doing. You have \$20 million but aside from that, even if you didn't have that \$20 million, you have to watch what you do with future projects that you may have, you may be thinking about. What benefit will it bring to us, what benefit will it bring to the people of San José, what benefit will it bring to the budget necessities that we have lacking in our budget? Now, I know you mean well, but money has been spent on items that are frivolous. And deservedly, they should be criticized. At times you talk about the legislature in Sacramento and Mayor Reed just said as long as the legislature is in session, sometimes we have to worry about when you're in session, too. So watch what you do. Be careful of frivolous spending, be careful of spending that could be at risk for taxpayers' money. Thank you.

>> Mayor Reed: That concludes the public testimony. Back to council discussion. Councilmember Liccardo.

>> Councilmember Liccardo: Jennifer, I was hoping we could address this issue of the \$20 million quote-unquote surplus. Am I right in believing half of that surplus vanishes simply because we have to adopt more realistic estimates for sales tax in the next year?

>> Jennifer Maguire: Yes, that's correct. I would argue that we had 13.3 because we failed to rebudget our redevelopment fee program reserves and those really do not belong and cannot be spent per city council policy because they are fee based by developers for anything that we would choose to spend them on. So once you take them away they would be 13.3, and absolutely, we would have to rebalance right today, would likely have to cut jobs to rebalance the sales tax estimate that we're recommending to do so with this additional fund balance. It is correct that there is no formal policy related to the additional fund balance, but with 500 revenue sources totaling \$1.1 billion on the revenue side and you've got hundreds and hundreds of appropriations on the expenditure side also totaling 1.1 billion you always would like, I think it's prudent to always be a little bit positive rather than being a little bit negative. But we want to be within a reasonable level of being positive. The 1 to 2% is always a stated goal at least in the 18 years I've worked here and that is something we shoot to be positive and end in the black and not in

the red.

>> Councilmember Liccardo: That's certainly better being in the black than the alternative. Just to go back to the numbers. 10 million went to adjust, basically down grade our sales tax estimates. Another 5.5 million went into our economic uncertainty reserve, is that right? And then we had several millions going towards this development fee programs which are seriously underwater. So this surplus isn't such a surplus, is it?

>> Jennifer Maguire: No, I wouldn't characterize it that way. If I had known what the -- if we had know our sales tax results that we got in September a few months earlier, we would have done these actions as part of the adopted budget.

>> Councilmember Liccardo: Right. The economic uncertainty reserve undoubtedly this will be on the block as we look at a \$91 million deficit in the upcoming fiscal year, would that be fair to say?

>> Jennifer Maguire: That would be fair to say, but I would say that I think the first call on that economic uncertainty reserve would be for any revenues that fall short of estimates this fiscal year as we move through 2009-2010, like if we have another unprecedented drop in sales tax, rather than causing a lot of organizational disruption we may consider using that reserve to rebalance the budget first, before we -- before we would consider using any of it for 10-11.

>> Councilmember Liccardo: So it might not survive mid year, is what you're saying?

>> Jennifer Maguire: Yes.

>> Councilmember Liccardo: I want to understand correctly, since we've been here we've had some end of fund balance at the end of the year. In fact, my knowledge is we actually have a policy in place that tells us how we're supposed to divide that between maintenance and future deficit reduction. So there clearly is something contemplated in the public document, I'm not sure if it's council policy or ordinance, maybe you can tell me.

>> Yes, it's a council policy and that council policy as I mentioned earlier, was amended in the June budget message, so it's that recent amendment. It used to be 50% to the future deficit reserve and 50% to street maintenance, but the mayor and city council approved a broadening of the definition of unmet deferred infrastructure needs. So at the recommendation of the City Manager we can use it for street maintenance, for I.T. needs, for building maintenance, for any of the four major categories of deferred infrastructure needs. As Councilmember Constant points out, we have at least \$500 million in the General Fund alone of those problems.

>> Councilmember Liccardo: If we're not in the black from October could you just describe what the options are? I assume that means potential layoffs, it may mean bond down gradings, all sorts of parades of horrible --

>> Jennifer Maguire: If we had not ended in the black, we would have brought forward a much more aggressive rebalancing plan, one that would probably have had to touch people. Which we really try to, with the shortage that we did is to do these corrective actions in here, we went to all appropriations that didn't require any layoff of staff, and looked for projects that we thought would minimize any service level reductions to our community.

>> Councilmember Liccardo: Thank you, Jennifer. I appreciate all that clarification.

>> Mayor Reed: City Manager.

>> City Manager Figone: Jennifer, if we could stick with that for a moment, on page iii, where the lineup that Councilmember Liccardo was just recapping, really if you accept the need to adjust for the downturn in sales tax, the only reason why we are actually able to boost the economic uncertainty reserve, the primary reason is because we're propose cuts which if we did not propose we really wouldn't have the \$5 million to put in the economic uncertainty reserve, is that correct?

>> Jennifer Maguire: That's correct.

>> City Manager Figone: Okay, thank you.

>> Mayor Reed: I don't think it's a good idea to spend your last dollar, and plus or minus 1% is a pretty tight margin. I'm always glad that it's on the plus side and I want to thank the staff for doing that and I think that's the wise prudent thing to do so try to edge a little bit. We only had a few million dollars left over actually that went into the uncertainty reserve. The rest we used, so it's not like we had money to spend. And on an 800 or \$900 million budget, the fact that we put 4 or \$5 million into the uncertainty reserve against the \$90 million shortfall next year is a good thing. I wish we had \$100 million to put in that uncertainty reserve but we don't. Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. I just wanted to thank Jennifer Maguire for explaining that so that the public understands that completely. I thank my colleague for the line of questions to reveal that information. It's really prudent that we're always on the same page and up and up on everything and it's very prudent, did mayor says that and I explain that, otherwise we are going to get behind and it's going to be bad, thank you.

>> Mayor Reed: Any further comments from the council? We have a motion to approve 3.4 and 3.6. All in favor? Opposed? None opposed, those are both approved. That takes us to item 3.7, proposed revisions to title 12 of the San José municipal code relating to the City's campaign finance regulations. City Attorney I think is going to handle that one.

>> City Attorney Doyle: We have a presentation with the -- my staff and the City Clerk. To sum up, this is a recommendation that has been worked through the elections commission, and Lisa Herrick will give a short presentation.

>> Lisa Herrick: Yes, good afternoon. I know I saw vice chair Smith, Michael Smith of the elections commission who's here again today. Staff really thanks him for his diligent work and the elections commission has tried hard to provide some good recommendations to the council. I want to remind the council that these representations or the proposed ordinance that's before you essentially lessen the standards according to charter section 607, so that requires a two-thirds vote. The first set of recommendation -- recommendations which are not appearing, relate to essentially increasing the contribution limits. And I mastered tables. And so there's a chart that you cannot see. But what it essentially shows is, how the proposed ordinance differs from the current ordinance. And I'll just explain to you that currently, under the voluntary expenditure limits, contributions to the mayor are limited to \$500, the contribution limits are limited to \$500, that would increase under the proposed ordinance to \$1,000. For council candidates, those who accept the voluntary expenditure limits are limited \$250 per election, those would be increased to \$500 per election. And then, for contributions to independent committees who either make contributions in San Jose elections or make certain expenditures, those contribution limits are currently at 250. This would increase to \$500. The elections commission did consider the issue of an adjustor that would automatically increase the contribution limits. And the commission didn't recommend such a provision for a couple of reasons. One reason is that the proposed language that was before the commission had some -- there was some confusion. There were some ambiguities in the language, that was presented to the commission, that basically didn't make it clear when you would get to increasing the amount by \$100, made it seem as if you needed to get to 101 to round down to 100. That wasn't the intent that the commission really was looking at. But the practical effect, also, is that just looking at what the CPI from year to year is that it would take a number of years to get a CPI adjustor that was over \$50 to bounce it up that additional \$100. And so -- and maybe I can articulate that better. Over the past ten years the CPI has ranged an average of about 2.8%. So to do 2.8% on \$500 contribution limit for example, on one year wouldn't get you over \$50. And the next year it

might not. It might take five to ten years to get up to over \$50 that would cause that -- the adjustment to be made up to \$100. And so the commission felt that rather than have the clerk go through this exercise it would make more sense for the council to just simply reconsider the ordinance every five to ten years. The other issue is, there was -- there was some thought that perhaps the -- rather than having the adjustment be in \$100 increments you could have a lower -- if you had a lower increment like \$20 for example, you would reach that. So maybe you would go from \$500 to \$520, to \$540. But the commission heard from at least one member of an independent committee that that kind of moving target every other year or per election cycle was something that they didn't savor and thought it would be more complicated to follow the rules in San José than it was worth. So that was the input that the commission had and that's why they forwarded this ordinance to you without a recommendation on an automatic adjustment, whether it's based on CPI or otherwise. Okay, we got some language here on this slide. So the next contribution or the next recommendation relates to contributions that are regulated. And you may recall that a few places in our campaign finance ordinance we have this language, in aid of or in opposition to. This language has been the subject of some argument that it is vague and not easily understandable. Around so what the commission has forwarded are some revisions which replace this phrase, in aid of or in opposition to, with as it relates to contributions, making contributions to a clearly identified candidate, for mayor or city council or in the expenditure context, making expenditures that essentially expressly add -- that are express advocacy or close to express advocacy, the full phrase is, taken as a whole and in context unambiguously urges a particular result. And so while that language is more narrow than the in aid of or in opposition to phrase, it is clear, there is a basis for it in other laws as well. Both that federal campaign, finance law and the California political reform act as well as our own municipal code. And then finally, the City Clerk has made a recommendation that we make -- that in order to be consistent with the political reform act, that we eliminate itemization of contributions that are less than \$100, and that simply would be -- that is the case in San José for the independent committees that this would be for the candidates and their control committees as well. So happy to answer any questions.

>> Mayor Reed: I think we probably have a few. Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. First of all, thank you for your work that you've done in the city attorney's office and also the elections commission for your work that you've done on this and we appreciate your continued efforts to help strengthen our policies, that whether it seems to be some confusion or not clarity on where we're going so thank you for that. Rick, I wanted to ask you a question. I'm looking at the two memos, the one that I co-signed with two of my colleagues, Kalra and Pyle, and then I'm looking at the mayor's memo. And the one we have agreed on, I think it's B on his and 2 on my memo. And I don't know if the City Clerk can put up the memos. But on number 1, on number 1 on mine and number A on the mayor's there seems to be a little bit of a difference on how we want to go about the -- when to add to the limits. And I know that you and I had -- increased the limits, excuse me. I know that you and I had spoken when this item first started coming to the elections commission. And I remember asking you about the consumer price index. And I think that in our conversation, and with your office, as well, that there was a reasoning from what I understand, on why it was necessary to do -- or why we should consider doing the CPI index. Can you explain, from the legal perspective, on why this would benefit us more?

>> City Attorney Doyle: I think the issue that we have recommended, or that we took to the elections commission on the CPI, was really to make sure that the contributions limit stays current, stays -- keeps up with inflation, that the concern under some of the federal cases has been that, you know, this ordinance for example hasn't been revisited since Tom McEnery was mayor. And so the dollar amounts really haven't changed. And so this would guarantee or assure that if you have the consumer price index

in there and the adjustment made accordingly, that this would ensure that at least keeps up with inflation. The concern that the elections commission has raised that that is administratively burdensome, that it would take -- the way we proposed it is that we would round up to the nearest \$100. You at least have to get to 50 before you kick it up and that might take a few years to get there assuming that inflation remains at current levels. So really, the real question is whether you want the council to revisit this on an ongoing basis or do you want to have that trigger? That requires the clerk or some of us at the staff level to keep an eye on what those levels are but it is a way of assuring you are going to keep the level current. May I say, in looking at the mayor's memo the mayor doesn't address the inflation factor, he does address the effective date of the ordinance. Essentially, the way this is to take effect is in the normal course, so about 45 days from today, which would mean there would be in effect in the next election cycle, the 2010 election, I think the mayor's concern and he can speak for himself but as I read it, he wants to wait until after 2010 election cycle so as not to change sort of the rules at this point but let's wait until we get after the next election and then the rules can -- or the limits can be increased.

>> Councilmember Campos: Thank you for that. And just to add on some of the comments that the City Attorney has clarified, I think one of the things that the election commission and I think the City Clerk was concerned about is the burdens this would put on her staff and probably the attorney's office as well. But I think that I agree in one concept, is that it should start in January of 2011, as the mayor has stated in his memo. But I think that we should go ahead and I'm going to put up a motion on the floor to go ahead and go with the memo that I have put forward, and on item 1 and just change the date so that it is effective January 1st, 2011 to be consistent with the think of the mayor that this would be -- serve the community and the residents better if it started in the new cycle of the election, and not to put a burden on people in this cycle that is coming up in December. And then to also stay consistent with 2 on my memo and I believe B on the mayor's memo. And if I can get a second on that.

>> Mayor Reed: Okay, we have a motion to approve the recommendations, let me see if I got it all right, to be effective January 1st, 2011.

>> Councilmember Campos: Correct, mayor.

>> Mayor Reed: All right. And then the -- your motion includes a consumer price index escalator provision as you've outlined?

>> Councilmember Campos: It does, mayor.

>> Mayor Reed: To keep current the reporting guidelines consistent with under \$100.

>> Councilmember Campos: As I've outlined in my memo and your memo.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Mayor, first of all I agree with the date that it should start, after the next election cycle. And pretty much everything that's been covered so far. The one thing that I don't think really was addressed, and I don't know if this is a question for who, but we've addressed the constitutional type claims that you could have nor the contribution limits not progressing with inflation or consumer price index. But one of the things that I noted was, we're really not changing the expenditure limit. And if you look back into the mid 80s when this was -- this dollar amount was basically set, stamps were 13 cents for first class, now they're 42 or 43 or something like that. So there's been a 4X factor there. How -- obviously we wouldn't be looking at that today because it hasn't been discussed and hasn't been vetted and I wouldn't want to jump into anything like that. But how do we go forward looking at that? Because I think the original intent was to give a candidate a budget that they could contact the people in their district. And it was set on a per-resident basis. And while we know that the residents -- our population has grown, so the expenditure limit has grown, it hasn't really grown on a per-person or per-contact basis. So I just want to know has there been any discussion on that throughout the process, and kind of where do we sit?

>> Lisa Herrick: The elections commission didn't take up the volunteer expenditure limits formula, which is if I understand correctly what you're talking about for the 75 cent for the mayor's race and then the dollar per resident for the council offices. It's something that you could refer to the elections commission and they could certainly look into it and look at comparisons with other cities that have voluntary expenditure limits and what their limits are so it's a referral that you could make.

>> Councilmember Constant: I think it's something that we should at least look at and have the discussion. Because if you basically just take a dollar and divide it by 13, you get eight contacts with a person, versus divided by 43, you get two. So you look at the purchasing power, you could say just in postage has been diluted by a factor of 4X. So my first question would be would that be a willing, friendly amendment, just to have that looked at for a later discussion?

>> Councilmember Campos: Yes.

>> Councilmember Constant: Okay.

>> Mayor Reed: -- the seconder so the motion is amended by friendly amendment.

>> Councilmember Constant: I did want to say, Lisa, your charts were very clear.

>> Lisa Herrick: Showed up on my copy. If I might, I just want to make it clear that the memo co-authored by councilmembers Campos, Kalra and Pyle, refers to section 12.06-210. There were actually other sections in the ordinance that would similarly benefit from a CPI or an adjustment. So if that's the intent of the council, would I like to include those in other sections when it comes back to council as well as perhaps fix some of the infirmities of the previous language that came out at the elections commission. So if I could get a little --

>> Councilmember Campos: We'll include that as part of the motion.

>> Mayor Reed: The amendment is amended slightly, again. Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I wanted to thank Lisa for the presentation, thank Councilmember Campos for the memo, and for allowing me to sign on it as well. I think it's an important issue, and I think that the amendments reflected today, particularly the one that reflects the mayor's, that at least takes the one element from the mayor's memo in terms of when we started and taste I'm hoping with the CPI at least as was stated by Rick earlier that even if, it still doesn't prevent us of taking this up at some time or a future council can still take up this issue at a future time if they don't feel the CPI adjustment has caught up. But at the very least, there will be ratcheting up over the years that I think will be appropriate. And so certainly I'll be supporting the memo as well as the amendments that were offered by Councilmember Campos and Councilmember Constant.

>> Mayor Reed: Thank you. I'd just like to point out that this is not just the cost of living that is a factor here. This is driven by the need to be constitutional in our limitations. We have two limitations we're trying to protect. One is the contribution limits with two candidates, and the other is the spending limits. And both of them together need to be modified to withstand constitutional challenge. Because we haven't modified the numbers for over 20 years, today if you do not accept the spending limit, in a council race the contribution limit is \$100, that looked pretty good 20 years ago. That doesn't look so good now. That's why there's a constitutional question, I think. And if you can't justify a spending limit of -- if you can't justify a contribution limit of \$100 as being reasonable for a campaign, then looks like you're forcing people to agree to the voluntary spending limit. Because as I understand it, we can only have a spending limit if it's voluntary, and that's the way our ordinance is structured. So we can't have an argument made that we are forcing people to agree to the spending limit because if we are then the spending limit won't work. So while I agree that these need to be modified to make them constitutionally sound, I'm going to support this motion because it was modified to make it effective outside the current election cycle. I think that's the best way to do it so I'm going to support the motion as amended and modified as we discussed here. Any

other comments or questions? We have a motion outlined by Councilmember Campos as modified. All in favor, opposed, none opposed, that's approved. I'm sorry, got ahead of myself. Ben field wanted to speak about this. Sorry, Ben, that was the only card, we missed it. Move on to item 4.1, which is a report of the Community and Economic Development committee of September 28, 2009. Councilmember Pyle chairs that committee.

>> Councilmember Pyle: Thank you mayor, despite all the doom and gloom of the past half-hour that we've been hearing about, economic development is booming along. One going to Paul Krutko, for achieving unusual stature in economic development and closely related disciplines. The international economic development council awarded fellow member status to Mr. Krutko at their 2009 annual conference. Keep in mind there are 4500 members who agreed that Paul Krutko should be a fellow. The term unusual stature characterizes a member's significant contributions to the profession through service and/or economic endeavors directly related to proactive economic development. Ian Bromley who is the chair said, Mr. Krutko serves as a prime example of one who has made such contributions, and we are proud to have conferred fellow member status on him. Congratulations, Paul. At that same conversation. San José's Green Vision was named the best sustainable development program in the United States for a big city. Furthering economic development is rarely a simple task in the best of times. And advancing the cause in the midst of a global financial crisis is nothing less than arduous, Mr. Bromley said. And as the consequence of the widespread economic turmoil, we have seen our members become even more ardent proponents of economic development fly in the face of one of the most challenging economic environments we've experienced in our careers. So congratulations, as well, to you, mayor and all of those who are work being so diligently on our Green Vision. It has taken global prominence. There are six businesses waiting to come to San José. A home and construction supply, a lighting manufacturer, electric vehicles manufacturer, energy company, aircraft defense manufacturer repair and a solar manufacturer. There are some highlights at Westfield Oakridge. We are working with Westfield to open the first indoor farmers market in San Jose. Westfield has implemented a successful indoor market at the Metreon in San Francisco and would bring the same operator to San José at the Oakridge Mall. And on October 15th, I was fortunate enough to be at the grand opening of the Nordstrom Rack in Oakridge. Think Christmas shopping, everyone. In revenues to the Green Vision, we received support from the governor's office, the Bay Area council and the congressional delegation for clean tech demonstration center project which was part of the state's regional economic development work plan. And the Office of Economic Development submitted a grant application for the demonstration center in the amount of \$4 million. Other grants applied for would ensure 100% of our public fleet vehicles run on alternative fuels. The downtown coordinate in partnership with the police department purchase ordered ABC server trainings for downtown entertainment venues. This training included over 100 employees from the downtown from various night life businesses. A second training has been scheduled for October. And the downtown coordinator is working with the police department and state officials to offer security guard training to night life business. In reference to media coverage we continue to garner strong coverage globally and over the past 45 days there have been 53 headline articles. People are definitely going to know the way to San José with this good work. Thank you.

>> Mayor Reed: Thank you, Councilmember Pyle.

>> Councilmember Pyle: I didn't but I would like to.

>> Mayor Reed: On the report, the excellent report. There's a motion to approve. We have a second, further discussion, all in favor? Opposed? None opposed, that's approved. I would just like to add that as we speak, the company of Toshiba which you've all heard of, is moving hundreds of new employees into San José in a nice facility that our Planning Department and our office of economic development

department, redevelopment agency helped them to get into, and that's a good thing. That includes item 4.1. We'll now take up 4.2, competition policy review, evaluating new service delivery model. I'd like to disclose that in preparation of this meeting members of my staff have talked to Pat Saucedo from the Chamber of Commerce. I think the City Manager is going to take lead on this presentation.

>> City Manager Figone: Thank you, Mr. Mayor, members of the council. Just by way of opening remarks, back in January when council discussed directing a revision to the competition policy, staff raised significant concerns regarding the need for flexibility to propose alternative service delivery strategies given our structural budget deficit. Given this challenging discussion I'd like to thank council for moving the issue to more structured stakeholder meetings and to the CED committee for working with staff to develop workable options. Through that effort we've been able to expand the dialogue from its initial focus on contracting out city work to the broad range of service delivery alternatives that we need to examine, whether involving private companies, nonprofits or simply looking internally at the way city staff conducts business. Staff will report on our recommendations, based on that effort, which have resulted from better understanding and, quite frankly, compromises on the part of all stakeholders. The proposed new service delivery evaluation policy will require additional up-front work by the administration when advancing any new service delivery concept. It is the intent of the proposed policy to ensure earlier stakeholder engagement and ultimately better decision making. And we do appreciate the involvement from so many important stakeholders in getting this to you today. From my perspective, I do recommend staff's -- I commend staff's recommendation for council approval because I do want to ensure that we do have a workable policy especially given what we are facing next year and beyond. So with that, let me turn it over to Sheila Tucker senior analyst in the City Manager's office who has provided so much of our staff support on this very important effort and I'd also like to thank Ed Shikada for his leadership and perseverance on this very challenging issue. Sheila.

>> Sheila Tucker: Good afternoon, Mayor, members of the council. Staff is here today with a report responding to council's direction back in January of this year to conduct outreach to stakeholders and to convene a round table discussion on the city's competition policies. Now, before you today is a three-part recommendation to address staff's direction to review these policies. The recommendations are as a result of six stakeholder meetings that have been held since January that involve our labor, business and nonprofit communities. Now the three part strategy includes first of all a new policy that is intended to guide service delivery evaluations including the decision if and when our competition policy, policy 0-29 which we'll refer to throughout the presentation would be applied. Also before you today are some specific revisions to our competition policy as well as recommendations for streamlining our request for proposal process. Now, the new service delivery policy is intended to really advance a strategic approach to evaluating a variety of service delivery models that could result in a change of practice. And that includes services delivered by city employees, services that might be delivered by our nonprofits, nonprofits in the community, as well as private businesses, or even other government agencies to deliver services. The primary goals of this new policy are that the city use an efficient and transparent process for evaluating service delivery methods that applies consistent decision making criteria, that involves stakeholders in the process to provide input to those decisions and really results in cost effective services that are leveraging the unique strength of our partners in the community to deliver services. Now, also before you today are some specific revisions to our competition policy. Now, for the most part, the provisions relate to establishing a level playing field, so that the process does not favor or disadvantage anyone in the process, including our own city employees' abilities to compete. Now, these particular changes do expand contractor requirements when competing against a city operation. What you'll also find is several changes that we've made to attempt to align the new service delivery policy with the competition policy and

specifically, what we've done is moved the decision making criteria, and the decision itself on whether managed competition would apply to the service delivery policy. If it's decided under that policy that managed competition applies then the competition policy now just guides that process. So just to summarize, staff today is recommending that the council approve our staff recommendations and adopt the proposed new service delivery policy and the proposed revisions to the competition policy. I'd like to just take a minute to point out the action that the Community and Economic Development committee took at its September 28th meeting. The committee did consider staff's recommendation and is recommending to the council that they do accept, adopt our report and approve the new service delivery policy and the revisions to the competition policy but with some potential revisions. Specifically, the committee is recommending that the council consider the amendments as proposed by Councilmember Kalra in his memo dated September 25th. We're not going to walk through those but you'll find those as attachment 4 in your packet today. But also, with some revisions to those recommendations which we'll talk about in the next slide. Next I'd just like to take a brief minute to review the primary issues for discussion that were identified in our council memos for the item today. Now, the fish is a threshold that triggers our service delivery policy. Now, staff is recommending that if a service delivery change is going to impact five or more full time equivalent employees then the business case analysis as described in the new policy would be undertaken. Councilmembers have recommended here today that the council consider lowering that threshold to three or four FTEs. The second recommendation relates to the public records requirements of the competition policy. There are several proposals today from various councilmembers on adding additional public records requirements. At this time, staff is recommending to change to the policy, competition policy related to this issue. I'd also like to note, there were several other recommendations advanced, in Councilmember Kalra's September 25th memorandum, that the Community and Economic Development Committee advance to council. Item number 3 of the slide in front of you speaks to the various topics of those recommendations. Staff would note at this time that we make no particular recommendations on these items but that these recommendations for the most part could be handle administratively. Also noted in the council memorandums was to provide a follow-up report to the committees or councils on the service deliveries that have gone through the policy or have been referred to competition. And staff is certainly prepared to make any follow-up reports as desired by council. And then lastly, staff would like to acknowledge an actual oversight in the staff report that did not get picked up in the final documents, either in the staff report or the resolutions before you today. We did agree in our last stakeholder meeting to remove the provision in the competition policy. You'll find it on page 6 the first bullet that noted all personnel records and other detailed information required of private sector competitive bid participants must be required of public bid participants. We did all agree to remove that provision and staff would make that recommendation today. And last but assuredly not least we'd like to take a moment to acknowledge all the stakeholders for their time and participation in the meetings and for participating in these very important policy discussions. At this time staff's available to answer any questions.

>> Mayor Reed: Thank you. I'd like to go back to the beginning of the discussion on this issue. I think it was January. And there were a lot of issues that were raised and concerns that were expressed. There were a lot of objections from our nonprofit community partners, that we contract with. I asked for examples of what problems we were trying to fix. I'm still searching for those examples. There's a lot of concern about the impact to the private sector and making a process that was already difficult, more difficult. And in addition, of course, as the manager's pointed out the need to balance service delivery modifications with the fact we're facing a budget gap, again. And because of these issues, concerns, the issue was forwarded to the Community and Economic Development committee to do a lot of work which

has been reported here today. And the council understood it was a complex policy and we needed a lot of time to work with the stakeholders and the community, and I want to commend the committee and the staff with all of the outreach and the stakeholder work they've done to try to come up with a balance of competing interests on different recommendations. That's why I'm supportive of the staff recommendations, recommendations to get us to look at different service delivery models while we're still working to solve the deficit problems. So I would ask that my colleagues support the memo that I put out here to basically implement the recommendations that came out of the stakeholder work. That's where I think we're going to go, although I think we will have quite a bit of discussion before we figure out exactly what we're going to do. Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. Before I get started I did want to mention that I did, me or my staff have met with people from the chamber of commerce and a number of private businesses. I did want to echo some of the mayor's comments. I think that we've gone through quite a lengthy process here, and having talked to several of the people who were involved in the stakeholder group process, I think we made a lot of progress. I do, Mr. Mayor, agree with you on your recommendations in your memo. And I would like to make a motion to put that memo forward at this time.

>> Mayor Reed: A motion to approve the recommendations outlined in my memo.

>> Councilmember Constant: And then just my final comments on that are, I think when you bring such a broad group of people together and you work hard, I think you really do come up with some really good solutions to the issues and challenges that are facing our city. And I think that this, we have really developed a process with these side modifications that we really allow our local businesses, our nonprofits and our labor groups to work together, and to create a sense of competition that I think will benefit all parties involved.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I would like to begin by commending the 16 people that served on this committee. And they've spent time, deliberation, a tremendous amount of effort. And their services are absolutely stellar. I'd like to commend them and to ask them, hopefully, that they'll be able to come back again for any further evaluations. I would also like to commend Ed Shikada and Sheila Tucker. Because without them this would have fallen off the tracks several times. I appreciate your patience and your guidance throughout this process and I'm happy that this issue did come to CED. It was a very interesting experience. I'd like to speak to the recommendation. First of all, have some concern that if we stay with 4, that there will be some groups that will -- there will be some falling through the cracks? And here's what I mean by that. We all know very painfully so that because of position cuts that have been implemented in the past and cuts that will be coming in the future, that our staffing levels are so low, decisions to contract out certain services will be made without benefit of an evaluation. And we are also painfully aware of how thinly some of our city services are staffed, decreasing the number of full time employees to 4 helps to make sure that the current low staffing levels because of the budget do not eliminate the need for a service delivery evaluation for every service. There are some services that will just slip away and nobody will be ever able to evaluate them. My second recommendation reflects the concerned negotiations regarding the public records act and how it would apply to contractors, whether it's be businesses or nonprofit partners. These recommendations I feel provide clear expectations about what records need to be kept by the outside organization and how they will be accessed without subjecting the nongovernmental organizations to the broad public records act. And then the third identifies a specific process for evaluating these policies, and whether they are effective, after there's been sufficient time to enact them. I am concerned that we do need to continue until January of '11 so that we have plenty of time and a lot of lead on this issue because it will be coming back for evaluation,

which will probable lead to some changes, some amendments in the whole document. So, and included would also be information about city satisfaction and the services that were provided. The staff assigned to this effort has done an absolutely amazing job guiding the process. The copy of policies zero to 29 provided in the staff report demonstrates the amount of work and wordsmithing that was done at the meeting level. After numerous discussions I'm recommending these changes, and this will help to address the issues that were not agreed upon at the round table level. I would like to point out a couple of things, but I think I might wait for other comments from other members.

>> Mayor Reed: We do have some other comments. First I wanted to thank you, Councilmember Pyle as chair of that committee for taking the task and doing a great job of working through the stakeholder process and with the staff. Councilmember Herrera. I'm sorry. I think I'll take the public testimony now, since I have no other requests to speak at this time. We have about a dozen people that want to speak. When I call your name please come on down so you're close to the microphone when it's your turn. Nancy Ostrowsky, Jeremy, W. Sakoff Ginsberg.

>> Councilmember Pyle: Mr. Mayor, while they're on their way up can I make a substitute motion?

>> Mayor Reed: Sure.

>> Councilmember Pyle: I would like to make a substitute motion for acceptance of my memo.

>> Mayor Reed: Substitute motion for Councilmember Pyle's memo. Okay, substitute motion is on the floor. Go ahead, Councilmember Herrera.

>> Councilmember Herrera: And I had a friendly amendment to that motion.

>> Mayor Reed: Nancy, just hold up a sec, relax here. Councilmember Herrera.

>> Councilmember Herrera: If Councilmember Pyle would accept that, in section 2, 2.2, to add the following language, "provide public access to these records as identified in the RFP through requests to the city under the same terms and conditions that the city provides city records and at the same cost." So that is again to focus, I am hoping to, adding a couple of things, allay some of the concerns that the chamber of commerce has brought to our attention. Also I would like to add recommendation 2-3 under 2 includes specific language in any RFP that identifies initial records to be kept, any request for additional record keeping will be done on a yearly basis through an adjustment to the RFP.

>> Mayor Reed: Let me just -- that's a request for friendly amendment, acceptable to the maker of the motion and acceptable to the seconder, Councilmember Nguyen? Okay, we have a friendly amendment, I think the City Attorney has a question.

>> City Attorney Doyle: I have a question, I think I understand the first part which is essentially, it's identified in the RFP and therefore there are no surprises. The second part though as the annual basis to be updated as part of the RFP. It's really a contract and if we have a contract and the contract amendments process or multiyear contract, you are dialing with changes to the contract not to the RFP necessarily. I'm not entirely clear of what the second part is. Maybe I missed it.

>> Councilmember Herrera: If there are any changes, you know I'm talking about the RFP because that is a document that we're starting with. Maybe it would need to be changes, I'd accept that.

>> City Attorney Doyle: The initial RFP is that you folks will be subject to the public records act like we are, like the city is, and at no additional cost. And then beyond that, though, if you have an agreement, we'll look at it annually through the contract process, so it may be subject to an amendment.

>> Councilmember Herrera: It would be the contract. I agree with you, starts off RFP before the actual contract is set in place.

>> Mayor Reed: All right, I think we're ready for public testimony. All right, we have a motion on the floor. Back to Nancy Ostrowsky, and then Jeremy Voross and then Alisa Koff-Ginsburg.

>> Good afternoon. My name is Nancy Ostrosky, and I'm senior staff at IFPTE's local 21 representing the

AEA bargaining unit here today. We have several comments from AEA for you to consider. City employees have approached this process with the bottom line, I, for improving the delivery of quality services during difficult economic times. The City Manager's staff was very clear during the stakeholder process, that the ultimate goal of these two policies was to resolve, in quote, quality, cost-effective services that leverage the unique strengths of public, private and nonprivate sectors for service delivery. This was clarified repeatedly when some stakeholders in contrast argued the city's bottom line goal should be identifying the cheapest way to provide a service. Councilmember Pyle's recommendation on an annual report measures the responsible intended outcome delineated by the City Manager's staff. Mayor Reed's alternate recommendation focuses only on how many proposals and how much money is saved. This speaks volumes as to his visions for this policy. Taxpayers and employees care about quality. As the purpose of this policy is to always find the cheapest service and not to worry about the erosion of quality, then this quality could save money but sacrifice the quality of life and San José residents. The annual report to council would not take into effect the savings, but find cheaper services resulted in residents complaining about inadequate access to services, or poorly trained or rude staff. We have elected to protect the interest of taxpayers as both identifying the mechanisms for cost effective services but also ensuring the quality of these services. I urge you to follow Councilmember Pyle's leadership and require an annual report that evaluates this policy based on savings and quality. Thank you.

>> Mayor Reed: Jeremy Voross, Alisa Koff-Ginsburg, Michelle Berteloni.

>> Good afternoon, Mr. Mayor and the rest of the esteemed city council. My name is Jeremy Bruce and I'm a proud lifelong resident of District 8. I'm here to support the leadership of Councilmember Pyle and her proposal which protects public access to information while at the same time protecting what data should be confidential. Taxpayers have a right to acquire information about how our tax dollars are being spent. You are making decisions about the spending and management of our money. When you hire a contractor at your home you want them -- you want to know their credentials and their history. This right cannot be ignored when outsourcing services nor can it be replaced with a one size fits all policy of no personnel records. Families going swimming have a right to know how the contracted lifeguard has been trained. Families of elderly seniors have the right to ask about who is spending time with their vulnerable loved ones. San José taxpayers are all trusting you, our councilmembers, to set a standard that protects our right to information about how our money is being spent. Please adopt Councilmember Pyle's proposal to protect public access to records, ordinarily and necessarily, kept in a facility where we're providing the service, this standard has been successful in Florida, in fact, and has provided protection while allowing the number of contracted services to nearly double one year from 289 outsourced projects to 551. Thank you.

>> Mayor Reed: Alisa Koff-Ginsburg, Michelle Berteloni, Gay Gayle.

>> Good afternoon. My name is Alisa Koff-Ginsburg, and I'm here from Working Partnerships. As part of the stakeholder group a recommendation was made to change the nonretaliation policy to include possible sanctions for violation, including very clearly, the termination of contract. The staff agreed that was the place for it, rather than in the competition policy. This is needed as a clear, strong deterrent, to violations of of this policy. Can staff provide acknowledgment of this?

>> Mayor Reed: We'll come back. There will be a question we can pose to the staff, they can explain what everybody's done.

>> Thanks. So I urge you to follow this stakeholder and staff idea to send a clear message in the nonretaliation policy, thank you.

>> Mayor Reed: Michelle Berteloni, Gay Gayle, Bob Brownstein.

>> Good afternoon. I'm Michelle Berteloni, and I'm a small, very small business owner and a parent and a resident of Willow Glen. Everyone, the city staff, and the contractors, elected officials, everybody has the best of intentions in protecting the public interest. But sometimes, best intentions isn't enough. For example, in early 2007, the new Almaden valley library opened and a contract was signed for a coffee cart operator. One day a patron of the library walked in and recognized the man as a Megan's list sex offender. Turmoil ensued and ultimately the contract was voided, thankfully. As you look at contracting out more services, we don't want to repeat this kind of experience or even something that's not as serious as this. As a parent, and as a resident of San José, are I want to know that the contractors who are going to be around the kids and my neighborhood's kids are carefully screened and I want contractors to know that I can check their records to make sure that they've not hired someone who's unsafe to be around the public. As a business owner, I understand the need for transparency and accountability. And I just see this as a cost of doing business. The basic record keeping requirement and transparency, I think that is required, is not too much of a burden and it's not too much to ask. Please support Councilmember Pyle's very reasonable approach to protecting taxpayers and the families of San José. Thank you.

>> Mayor Reed: Gay Gayle, Bob Brownstein, Pat Saucedo.

>> Good afternoon, mayor and members of the city council. On behalf of the largest management bargaining unit in the city I want to thank Councilmember Pyle and her committee for the opportunity to work with the business and nonprofit leaders over the past six months in order to ensure that city services are provided in the best possible manner. Although discussions were often lively, to the point of raised voices and chairs moving, there was a beneficial increase in the level of understanding that went on for all competing and often opposing positions. I bring you two concerns, along with support for all of the work that we did. One is, as a future contract manager, and that is the fact that request for proposals are designed to get the best contractor based on previous experience and on the paperwork and the other methodology we use to evaluate them. They are not necessarily based on managing the best contractor. So it is not potentially going to be sufficient to have an RFP document to properly manage a contractor, a vendor who the city has never done business with before. So I am concerned very much about the fact that all documentation used is based on the request for proposal. It is, after all, a procurement document, not a contract that leads to a contract. But it does not necessarily allow us the documentation we need to ensure that the services are being provided in the manner we wish. And finally, I want to ask you to remember that good policies are policies that provide guidance and direction in bad times, as well as in good times. Some people, in our group, wanted to write a policy that looked primarily at saving money. We need a policy that's ongoing, that will be strong in the good times, as well as in our ninth year of budget deficits. So when you vote, think hard and long about what is the ultimate goal: The best services with the best protection for the citizens, for their funds, and for our reputation. Thank you.

>> Mayor Reed: Sorry, your time is up. Bob Brownstein, Pat Saucedo, Ben Field.

>> Bob Brownstein: Mayor Reed, members of the council, today we have the opportunity of concluding our design of a new alternative service delivery policy, and if Councilmember Pyle's memo is adopted, concluding it as a job well done. Almost a year ago, four councilmembers refused to be bulldozed by consultants into supporting outsourcing without adequate oversight. Because of the effort they initiated, San José may escape the significantly financial losses and declines in services experienced by governments that raced to embrace privatization as a panacea. Translating intent into policy requires leadership. And leadership is not about making headlines, or about inducing discord for political gain. Leadership is about solving problems in a manner that encourages communities to work together for the common good. The chair of the CED committee, Councilmember Pyle, clearly demonstrated

impressive leadership as stakeholders struggled and we did struggle and occasionally raised our voice over this issue. The task of designing a new policy was also significantly assisted by the diligence and creativity of Councilmember Kalra. This is the kind of constructive leadership San José needs in these troubled times, and I hope we see more of it in what will certainly be a challenging year. Thank you.

>> Mayor Reed: Pat Saucedo, Ben Field, Peter Sabo.

>> Good afternoon, Pat Saucedo, chamber of commerce. First let me say that we are very appreciative of all who participated in the stakeholder meetings and staff and the stakeholders. Second, I would like to state that I think on behalf of all that were at the table, we always consistently stated that what we were looking for was quality services provided to our citizens in San José. Whether it be from our quality city family, or, frankly, our quality private sector, private businesses that serve Silicon Valley. I think today I'm here to say that we very much support the mayor's memo which recommends the staff recommendations. It has been stated great compromise took place during these discussions. We are down to five FTEs in order to allow, up to five to allow going to an RFP. I think the consensus that was reached at the table is the alternative service delivery model was going to begin to provide some level of flexibility for the city staff to long-term begin to deal with some of the budget issues we're facing. And the goal also is that we would still be able to provide quality services to our residents and businesses, by our city staff, as well as by the private sector. I know there's been a motion today to add to the disclosure. And I have to be honest. This has been very difficult to understand. And we have gone round and round about it. So I'm a little flummoxed today. I don't exactly understand what you're saying, Councilmember Herrera. I really need for the City Attorney to weigh in on this because we have gone round and round about this. And we have been very clear that whatever is required of the private sector, if you really want to do business with your business people, you have to be sure that their private information is allowed to maintain private. Or they will not participate in doing business with the City of San José. Thank you so much.

>> Mayor Reed: Ben field, Peter Sabo, Jerry Mungai.

>> Thank you, Mr. Mayor, but I'm going to pass.

>> Mayor Reed: Okay, Peter Sabo, Jerry Mungai, Linda Didis.

>> Thank you Mr. Mayor, members of council. I'm going to suggest that point 2 of Councilmember Pyle be included in the policies under consideration. I think what's involved here is openness. When we do the people's business we have to make sure the people know what we're doing. And I think point 2 of its four subpoints does that. It requires contractors and subcontractors to keep adequate records of the dealings of the city. It requires that those records be publicly available on a reasonable basis. It requires that requests for proposals include specific language about record keeping, especially initial record keeping and finally, with regard to confidentiality, for things like trade secrets, that we use the same policy that we use on other city contracts to be consistent. I think that would go a long way to keep this process open, and I'd like to urge that acceptance. I would close with saying that I want to quote a phrase from Woodrow Wilson. He said what we should do is work for open covenants, openly arrived at. That's just what I hope you would do, thank you.

>> Mayor Reed: Jerry Mungai, Linda didis, Yolanda Cruz.

>> Thank you, Mr. Mayor, council. I must confess, I haven't had a lot of times to review these proposals. But it looks to me we want to have a policy that's cost effective. That to me means as a taxpayer, better service for the same dollars or the same service for less dollars. And when I read further, it says, that sounds great, then we going to leverage the unique strengths of public, private and nonprofit sectors in service, that sounds interesting. So then we -- I assume this is still in the policy. The impact on public employees, what are they evaluating our core values, integrity, innovation, excellence,

collaboration, respect, and celebration. I don't understand how these impact the decision. This seems to be mostly an economic decision. And it's more effective, you get the same quality of service at less cost, that should be the goal of the policy. Thank you.

>> Mayor Reed: Linda didis, Yolanda Cruz and then Ross Signorino.

>> Good afternoon, my name is Linda didis and I represent AFSCME and specify the MEF chapter here today. I did participate in the panel, we had many meetings around that. I'm here to recommend that the city council and the mayor adopt the recommendations in Councilmember Pyle's memorandum. I'm very pleased with some of the recommendations in here. I specifically spoke almost at every meeting about keeping the number of employees at three. The recommendation from staff is five. Councilmember Pyle's memo recommends four, which I guess is a compromise. And specifically because of the reduction cuts and the budget cuts that are occurring, we are finding that especially in this last round of budget cuts, with personnel, although some of the -- a lot of those employees were saved, some of the services went down to, you know, a few number of employees trying to do all the work. And as much as we'd like to believe that when front line staff is cut and certain areas aren't targeted for contracting out, I think we have been around long enough to see places where that has been done. I also think one of the purposes of the round table was to make a -- keep a level playing field and I think that as long as private companies and nonprofits are not made to open their books like government employees have to do that the level playing field will never be level. I also like number 3, in Councilmember Pyle's memorandum she talks about the number of city services that have changed but actually haven't gone to the extent of service delivery evaluation. And we're concerned about -- of course I just got these on Friday so I haven't asked any questions about Mayor Reed's memo. But some of these services, particularly one that was on the agenda for contracting out, which was happy hollow's retail and concessions, when we sat down to talk to them, they have not gone through an extensive process, and yet the department claims that there can be money saved if in fact city employees do not do that.

>> Mayor Reed: Your time is up. Yolanda Cruz and Ross Signorino, and that's the last card I have.

>> Hello, my name is Yolanda Cruz, and I am the president of AFSME MEF. I am here to express my genuine concern and frustration regarding the two competing competition policies before you today. As a city employee and a labor leader I have personally participated in the CED meetings that you the city council members of San José asked for. We addressed concerns, issues and possible improvements to the current competition policy with representatives of all the major stakeholder groups. There was a significant amount of time, work and effort put into developing a better policy that Pat Dando herself said was outdated and no longer useful. As a labor leader I do not share Ms. Dando's opinions. But as a committed public servant and as a representative of more than 2500 other city employees, it was not only my desire but my responsibility to engage in this process. AFSCME MEF is a union of dedicated city employees committed to providing quality services to the communities we serve. Quality of service is what should drive all city representatives regardless of the positions they hold. Mayor Reed your recommendation explicitly leaves this very important factor out. We all recognize we are in an extremely challenging economic climate right now, but to exploit this problem with a misrepresentation of a fair and equitable process by willfully engaging us in an exercise that leads to the same result that you wanted to have happen almost eight months ago is deplorable. I'm once again face Wednesday a two minute opportunity to state my case on whether you should support one recommendation over the other. I'm asking you, no, actually I'm imploring you, to accept the recommendations set forth in Councilmember Pyle's memo. It is a product of a collaborative work that was vetted in the proper most open process where all invested stakeholders were represented and it is the only responsible way for you to act today. Thank you.

>> Mayor Reed: Ross Signorino is our last speaker.

>> Ross Signorino: Mr. Mayor, members of the council. The subject is a very interesting one. Excuse me while I clear my throat. Any time we can get private enterprise to do the same work, the quality work that our city employees do, that's fine. That had a better applies, of course, and I'm sure Councilmember Pyle's committee has looked into this. It is important to understand that we have staff people here that scrutinize contracts when they come before you. Not to mention that library that was going to be built, that is being built. Then there was a case too that they didn't get a chance to scrutinize because politicians here at City Hall interfered with their ability to do their job. And I'm speaking about the time when this City Hall was built, things did not go out for bid, and that was a scandal, that only one contractor, if you want to call him a contractor, one organization got the bid to build the electronics here at the City Hall. That was wrong. And who was blamed for that? The people who ran those departments, which they were not blamed, it was the politician, people who interfered with their work, their inability, and that's what we have to be careful about at the same time, that we do not interfere with staff people, when they're giving you a report, they're good people, they're doing an honest job and I think their recommendation, of course you scrutinized them but they are good reports. Thank you.

>> Mayor Reed: That concludes the public testimony. We have a motion on the floor and a substitute motion on the floor which is in front of us now, made by Councilmember Pyle as way of friendly amendment. So that's what we're considering now. Councilmember Campos.

>> Councilmember Campos: First of all thank you Councilmember Pyle for your leadership on this and for your commitment to be willing to sit through long discussions. But I think that we are being served with a better recommendation in front of us. I just wanted to ask if it is possible in looking at the many memos that have come out, the first memo which came out, which was on 1-9-2009, regarding this subject, has various items that were asked, or that were directed for staff to look at. And one of them is staff was directed to come back or give an analysis of pay-to-play regulations. And I'm not asking that you move that forward today and implement it. But what I am asking if it's possible is if this could go to the elections commission, for further analysis and discussion. And would include comparisons with other large cities in California, and example would be San Francisco or Oakland. And then come back at another time which is appropriate -- whatever time is appropriate, that staff can give us, so that we as a council can have an opportunity to discuss that with maybe a recommendation from staff and the elections commission.

>> Councilmember Pyle: Well, I think it's a good idea.

>> Councilmember Campos: Thank you.

>> Councilmember Pyle: Because it is more politically -- it has more political overtones and that seems like a better commission to take care of that.

>> Councilmember Campos: Thank you.

>> Mayor Reed: Is that a friendly amendment, okay with the seconder? Councilmember Nguyen? City Attorney, did you have a question or comment on this?

>> City Attorney Doyle: No, we can get this on the next agenda probably if the council directs us.

>> Mayor Reed: Okay, anything else Councilmember Campos? Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor, first a question and then some comments. The amendment offered by Councilmember Herrera. I just wanted to get clear on those amendments. I think there were some questions going back and forth. I don't know Rick if you can try --

>> City Attorney Doyle: I'll give my understanding and then if Councilmember Herrera wants to correct me she can do that. Initially the first issue is, in the case of the RFP, it needs to be disclosed, or identified, what -- and that's on number 2, too. Provide public access to these records as identified in the RFP. And so the RFP basically requires or discloses what it is that we would be seeking. And I think that isn't

inconsistent with some of the other memos that seem to be saying similar things. And then the other issue then is, monitoring on an ongoing basis and I think there's a recognition that there needs to be some tweaks or some changes on an annual basis and we would revisit the issue in the contract to deal with it. Because this does -- this is sort of a new concept. There are a lot of questions that have been raised. I essentially look at this as an agency situation where somebody has our -- is doing the work but essentially is, to the extent the city would have to disclose records, they would have to disclose similar records. But they should know up front what it is that they would be required of them.

>> Councilmember Kalra: Okay, thank you for that -- the clarification. And I just wanted to thank city staff and looking at the number of stakeholders involved, certainly all the representatives from bargaining units, Working Partnerships U.S.A., the nonprofit community, and San José-Silicon Valley Chamber of Commerce, I know there's a lot of work that has been done over the course of this year and I know even though Councilmember Pyle invited them to come back on future occasions, I don't know if after all that work they would want to come back to discuss these issues anymore, even though I would encourage them to stay engaged as we go through the budget process. Because I think it's going to be important for all these stakeholders as well to be engaged with us as we go forward. And I want to thank Councilmember Pyle for her leadership as chair of the Community and Economic Development Committee, and I know it's been challenging for her as well as all of us as we've been trying to grapple with this issue. And so I think that the memo put forth today by Councilmember Pyle is appropriate, and I think it ultimately reflects the bulk of the work that's been done by the stakeholders. And I think the motivation or additions made here only strengthen the work done. And going forward as Councilmember Pyle indicated we will always need to continue to evaluate to see where we go and how it's working. But I think this is a good first step after almost a year of working on that. So thank you and I will be supporting Councilmember Pyle's motion.

>> Mayor Reed: Let me say I'm not going to support the motion. The stakeholder process was long and arduous, as people have described, and one of the things the stakeholders arrived at was the five full time equivalent issue. And I think that's an important issue, because the requirements that we're proposing to add to the process I think will undoubtedly make it more difficult for people to do business with us, make it less likely we'll be able to contract anything out or do any alternative service delivery. And so where you draw the line and where you have to get in that process is an important one notwithstanding that, the stakeholders did come to an agreement and I'm willing to support what the stakeholders agreed to as led by Councilmember Pyle. So I'm not going to support the motion for those reasons. Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. I have concerns with the motion that's the substitute motion that's on the table right now, specifically in the area of number 2, and let me explain why. First, as we've talked about dealing with businesses in the City of San José, no matter what process we've talked about, we've talked about making sure that there's a level of certainty that people can have some certainty in what they are going to be -- and how their dealings with the city are going to progress. But where there's some significant uncertainty is in the ambiguity of the sunshine section of this. Specifically, now we have an amendment to the substitute motion that says, somebody who enters into a contract with the city may have that changed every year if somebody decides something else should be made public. There's not a lot of certainty in that. There -- if you look at item 3, it gives the illusion of certainty where it says, include specific language in the RFP that identifies the initial records to be kept. But that word initial is in there. And then when you read number 4, it then says, except as authorized by city ordinance or policy. So someone could enter into a contract today, enter an RFP today, enter into a contract tomorrow, they know what they initially are supposed to keep at public records but any given

Tuesday the city can change a policy and all of a sudden they don't know what they're going to be doing because it says here, as authorized by city policy. And then, they're in a contract that may be changed annually whenever the city reviews this policy annually. So there's two big loopholes there. And it's specifically missing what I think is probably one of the most important things to private business, which is outlined in Mayor Reed's memo item number C-2 that has a specific and certain caveat that trade secrets and confidential employee information should remain confidential. And those are issues that I think are very important and will be very important to any business that is going to do business with the City of San José. And I think that we've done a lot of work as it relates to sunshine and trying to be as clear as we can it will and then we have a policy like this that has a lot of vagueness and ambiguity in it. And I think it's going to lead to a sense of distrust from the business community as they enter into attempting to qualify for this type of program to compete, and then if they do, are able to, then being able to fulfill the obligations of a contract that seems to be a moving target. I also agree with the mayor that the number 5 in section A of his memo, I guess, A of his memo, and which has been changed to 4 in section 1 of the memo that's on the table, is also an issue. It was something that worked through the process, and 5 is a reasonable number. I don't think I can support the motion that's on the table for those reasons. And I also had a comment on the pay-to-play. I think you know, our campaign contribution laws, which we just revisited a short time ago, are designed specifically to make sure that there's not enough money to influence political decisions. And if we're saying that someone can buy an RFP for a 250, 500 or a \$1,000 contribution, I think we have a much bigger problem. And I think that's why we have the contribution limits, and we try to balance the contribution limits in our policies and ordinances with the First Amendment. So I don't think that's an area we really need to go down unless we have absolutely no confidence in the 11 of us sitting up here.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. On the motions at hand, I appreciate all the work that's been done. I mean, we essentially just have fundamental differences. But I appreciate the work that gets done and, you know, the committees and the outreach groups. But there's just a fundamental difference that I just feel that noncore city services that have nothing do with safety should be considered for outsourcing. It's just a fundamental difference. So -- and both motion today are not where I'd want to be, but I'm inclined to support the mayor's motion because it's the most simple and goes with what was done in the sessions with both groups sitting at the table. I'm just really simple. I have a strong desire to see a beautiful city. And that means clean parks, paved streets, safe neighborhoods. And the current policy that we have, it's cumbersome. It's nearly impossible to contract out. And at the end, you know, I don't think you can sit through this meeting, and listen to the financial situation that was shared with us by our budget office and not wonder about outsourcing. And I don't think that budget decisions should always impact our resident services, when we could do things differently. And that's just how it is. Again my thing is not core services but it is the things that are essentially noncore. I recently went on a tour of the sewer. I realize that those who work in the sewer are skilled professionals. That's an important profession to have because of situations and emergencies that happen. That's an important part of the City's infrastructure. But others aren't. We have the analogy about janitorial City Hall. Our janitorial is outsourced by I'm sure some strange series of historical events. But that saves us \$1.2 million. That's \$1.2 million that could open every branch library on Saturday or Sunday, you pick your day. I know the residents want that, they understand that. Or in a time when we're stressing about crime and a retiring police force, I could hire 10 police officers. Those are the choices that are there. We just have a fundamental difference about how we see money to be spent. I respect the viewpoints, but it's just a fundamental difference. What else would I want to say? And I would say this. Why are we even talking

about outsourcing? Well, the reality is because I don't have the money. And if I can't get pension reform, or I can save money down the line with two-tier pensions, then I have to talk about outsourcing. So it's all the same wallet or purse of money, and if I can't get reductions in savings here I got to get it there and if it's always no, then in the end, the council will be faced with that decision in June to lay off. And again, I think you can outsource without laying people off. I think, you know, current city employees could supervise outsource contracts. Outsourcing's not about ripping on employees or degrading them. I know from my time here that a majority of people here are great and do an outstanding job but I just can't afford to do how I historically did it. So if we go to the end where we can't make any decisions and we're up against the cliff then that's where it's at. If it's not this, it's layoffs. And we always have attrition in the city through retirements. And I think you can do outsourcing without laying people off. Otherwise we're going to, and I know one speaker brought up the Megan's law, the child molester analogy, the scare tactic. Well, you know what, child molesters are union and nonunion. The last one that made the news was a school janitor. So I really don't think that's a fair analogy. That's often more of a scare tactic. When it comes to financial contributions for pay to play contractors, if you are going there then let's ban for all contributions from unions, since I vote on their wages and benefits, let's ban all donations from home developers because I vote on zoning. Same way we don't take donations from card clubs, because we regulate them. So I think, you know, let's get to the point of not taking money from anybody we impact their lives on, I think that will be more fair. So I will not be supporting the substitute motion, I'll be supporting the mayor's motion.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks, mayor. I had some questions. I'm not really that caught up on 5 versus 3, 4 seems like a Solomonic number. But I guess I have questions about paragraph 2, and I was hoping some folks from the city attorney's office or otherwise could help me understand the differences. If we look at paragraph 2, line 1 of Councilmember Pyle's memo, I'm trying to understand what the difference is between keep and maintain records that ordinarily and necessarily would be required by the city, and whatever records they would otherwise be required to keep under the staff recommendation. What records are we talking about, really?

>> Brian Doyle with the city attorney's office. I think in terms of keeping records, we're talking about all the same records. All our city contracts require our contractors to keep records that relate to the contract. So I don't think there's any difference in terms of, and I think there's a little bit of confusion about what I've heard, because I'm confused as you are about what it is we think we're doing. All our contracts, even that don't pertain to this policy, always require the contractor to keep records so our auditor can audit them, so the city staff of the city attorney's office, the departmental staff can look at what they're doing and we have the right as the city to go get all those records that relate to the contract. We typically don't have the right to get things like their trade secrets or their employee personnel records, those are not our records, and even under our contracts, our most aggressive contracts, we typically don't have the right to get those and I'm confused by whether the discussions about the confidentiality are meant to be something different than what the exceptions to disclosure are already, under the public records act. So I -- I think you could probably simplify the whole discussion by, if you're willing to consider such a motion, simply saying that, they're required to keep all the records, one. Two, we let them know in the RFP what records we want to get throughout the contract process. And those records will be subject to disclosure. And number 3, that we just stick to the exceptions under the public records act for nondisclosure. You know, the stuff that we have, we give to people, unless there's an exception under the public records act for such a thing as trade secret or personnel records or something like that. So if you stuck to those three guideposts and then when we got the first contract, that should a contract ever come forward under this process, we

could bring the contract language to you, and say, "Is that what you had in mind?" And that might be the way of kind of moving forward on the public records act issue. So I don't know if you want to consider such an idea.

>> City Attorney Doyle: Well, I think that's how we read number 2.

>> Okay.

>> City Attorney Doyle: It's in more words but it essentially is that effort to try to -- to the extent the city would be required to keep the same documents, that's what the private folks would do. We're going to get questions, for example, government salaries are public records. As you know they pop up in the Mercury News every year. Private firms don't disclose salaries. So to the extent we're requiring the same field, you're going to get a janitor that's -- let's use a custodian that's privately contracted, you're going to get the question, what's their annual salary, that would be a public records, albeit, the employer would include that as an employee record, in the included in the disclosure. I'm using that as an example. But there will be situations. Trade secrets and those aren't subject to disclosure and we wouldn't expect anybody to disclose them.

>> Councilmember Liccardo: But -- okay, now I'm leading line 4 of paragraph 2, it says ensure the confidential and exempt directors are not disclosed. And I don't know what confidential and exempt means, because usually those terms are defined by statute somewhere by reference. So I'm not sure, are we anchoring those terms to the public records act or are we deciding as a council that we're going to come up with a definition of what confidential and exempt is?

>> City Attorney Doyle: Why, I would say my interpretation of that is, it has defined in the public records act as modified by the city's sunshine ordinance. Again, we have adopted changes to the public records act, a little bit broader, but it really doesn't fundamentally change what is exempt under state law.

>> Councilmember Liccardo: Okay, just to go at my original question, what is different under this provision, clearly salaries of employees are fair game. I'm hoping I can just get some sense of what the difference is now, other kinds of information would be disclosable or required to be disclosed to the public that are not under the staff proposal?

>> To some extent, we have many contracts that are subject to prevailing wage and living wage. And under all those contracts payroll records have to be sent to the office of equality assurance. I don't know if they're here today. But I don't know whether they would normally redact the names, if someone made a request for the records in there. They perform a function that's designed to enforce our ordinance, so I don't know what level of privacy they normally apply to that. I really don't know if we for example trade secret, I mean we often get within a contract an agreement to keep certain information of the vendor confidential. I mean we'd either have to say we're agreeing to keep it confidential or we're not agreeing to keep it confidential if it's a trade secret. We couldn't then say, it would be subject to disclosure under the ordinance. We'd have to tell them up front, because the trade secret is a Property right protected buy statute. We'd either have to tell them we're agreeing to it or not. We couldn't say, we'll let you know whether going to disclose that or not. A lot of this is, we'll cross the bridge when we come to it because you really don't know what type of contracts as we move forward what makes sense to get as the city and what doesn't.

>> City Attorney Doyle: And what happens typically in litigation, is whether or not you are going to release as a trade secret, but somebody else says it's not and then that's the battle. To the extent that it is determined to be a trade secret, we would intend to keep that confidential as per state law.

>> Councilmember Liccardo: Having litigated those cases before, I know they're not fun. They usually involve lots of documents and many years. When we talk about provide public access, if I can just understand the mechanism for providing that access, they're keeping the records, with the private

company, they're not kept with the city. And we basically tell them when we get a public records act request you have to provide these records and you have to do so at no cost or very minimal cost, I guess the cost of reproducing a page of paper. Is that essentially what this would require?

>> Councilmember Pyle: If I may answer, yes. But we as the city would handle the public request. In other words we would get the information from them and then make it available. They wouldn't have to be providing it directly to -- excuse me? Go ahead.

>> City Attorney Doyle: The one area that we have run into problems in the past is the contractor will frequently say, it's cost us more money, it's cost us X dollars to produce this to you. They will charge for the time and the takes to retrieve information, copy it and send it over. The city under state law can only charge for the actual cost for duplication time. I think we'd have to handle that contractually, in terms of try to limit the actual cost of duplication, that's something we need to sort of work through.

>> Councilmember Liccardo: So we're on the hook for the PRA request, as I understand it, the company decides this is a trade secret, you can't have it. And we believe -- maybe we believe it is, and maybe we believe it isn't. So then we've got a breach of contract issue with the contractor, and the person who is making the PRA request gets to sue us. So now we're involved in two lawsuits over one request?

>> City Attorney Doyle: Typically what we'll tell a contractor is that if we don't believe it is a trade secret, that we will let them go to court and fight the issue, with the person making the request, essentially like interpleading --

>> Councilmember Liccardo: But we would be joined as a party?

>> City Attorney Doyle: We might be, yes.

>> Councilmember Liccardo: We're in the middle both ways, right?

>> City Attorney Doyle: Okay, but that issue comes up from time to time. We do hold documents, and we allow people that if the request is made and we're actually holding the document that we'll let them know that the request is made and that they want to try to protect it, they can go to court and try to prevent us from releasing it.

>> Councilmember Liccardo: Okay, the last question I have is line 4 in paragraph 2, the implications and what they might be. It says ensure confidential and exempt records are not disclosed except as authorized by city ordinance or policy. If the city ordinance or policy says they have to keep all the records that the city wouldn't ordinarily keep, does that override any statutory or other type of legal protection for trade secrets or confidentiality if we've got an ordinance that says --

>> Again, I would direct that back to the maker of the motion. Because I don't understand what really we're driving at there. I mean, I understand the exceptions to the public records act which are trade secrets and personnel information. There's a list of about 20 some-odd exceptions. But I don't -- I don't know what we're driving at with -- in terms of city policy or ordinance.

>> Councilmember Pyle: Mayor.

>> Councilmember Liccardo: Councilmember Pyle.

>> Councilmember Pyle: Yes, the whole purpose of section 2 was intended to address the concerns brought up by the members of the task force and specifically the Public Records Act. The RFP calls out what type of records that need to be kept and that there's no intent to expand the public records act for the person contractualing out. So it's of it's not intended to make it for difficult for people to participate. It's juts that the bottom line is that we work with taxpayer money. And we're a taxpayer, which the outlet for that money. So we have to make absolutely sure that the same standards that we impose, are imposed on the group as well. But this was not intended to do anything except to make that policy as clear as we can, not having been an attorney, I was a little --

>> Councilmember Liccardo: It's a curse, Nancy, let me assure you, it's a curse.

>> City Attorney Doyle: Councilmember Liccardo, are you asking whether or not the city through its own sunshine ordinance if it asks for or has broader disclosure requirements that that would supersede the public records act?

>> Councilmember Liccardo: Yes.

>> City Attorney Doyle: The answer is yes, to the extent it's city policy. But right now, our policy pretty much tracks the public records act, including exemptions. Now, where the council can do that, I don't know that we can abrogate trade secrets, I don't think we can. Were the council to decide they would need greater disclosure, then in our future contracts we would require contractors to comply with the city law. And I think that's essentially on the theory that whatever applies to the city should apply to the private firms as well.

>> Councilmember Liccardo: Okay, I'm a little bit less confused but not a lot. I guess I've watched this process unfold and I know it's been for many folks who participate a fairly painful process which has produced far more heat than light. And I guess it comes back to an issue that the mayor mentioned briefly earlier. But I guess it bears some mentioning again. Which is trying to go back to the problem that we're trying to solve and defining what that problem is. And certainly for the first time I actually heard an example of one that is a real problem which was the issue of the individual who had a -- was a Megan's law registrant who was working at the library, clearly an issue that we can resolve very directly through policy and if I'm not mistaken we already had the policy that resolved that. I may be wrong on that but if that needs to be addressed we could address it.

>> City Attorney Doyle: We do background checks now.

>> Councilmember Liccardo: I guess it was pretty easy to solve problems when we identify, much easier. I'm still struggling with what we're trying solve. The end result, we go through here, we know we're going through tough times, we're going to be laying off more employees. That's a terrible reality. None of us likes to see it. It's terrible for our residents, it's terrible for our family here in the city. And the result, I think, of this policy is we're simply going to be cutting more services and laying off employees, because we just don't have other alternatives. And so I'm still struggling to make this all work with an approach that is actually open to managed competition. I don't think this is managed competition. I think -- as Brian suggested, I don't think this is ever going to get used, this policy, just like the last policy didn't get used. I just don't think very many folks in the private sector are going to be interested. I just have those concerns, I'd be happy to be persuaded otherwise.

>> Councilmember Pyle: Okay.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I want to thank everyone who has been involved, I guess, since January when I got involved in this process, as a member of the economic development committee. It's been a very long process. And I would say we're at the end of a process, now where folks are trying to find compromises to put out the best policy we can. I want to thank the leadership of Nancy Pyle who's led our economic development committee and really tried to come together with concerns from all different stakeholders. Concerns of labor, the concerns of the chamber of commerce, the concerns of our staff, I think we've all been struggling with that. I want to thank Ash Kalra for his memo and for trying again to bring forth, we've all been working very hard to try to find compromise. I have some questions and I guess -- and it relates to two. And section 2 is what troubled me also because I am very concerned about having some sort of certainty for businesses that would end up working with the city in this. And that is why I added 2.2 and 2.3. Specifically 2.2, to try to add some certainty by talking about providing public access to these records as identified in the RFP. I think council actually supported what I said when he suggested a simplification, added that into it. So the idea is to try to add some brackets

around this so that we're talking about the actual service that would be provided as identified in the RFP. As far as 5 versus 4 I was inclined to support the staff recommendation initially, and I probably still would rather have five but I'm trying to work in a situation where we can compromise. I can't -- I'm not totally convinced that we know exactly the difference between 4 and 5 so I think that, you know, I'm willing to work on a compromise on that. But I think, you know, we need to move forward and I guess I want to ask staff, what I'm hearing as this discussion has gone forward is most of the things that Councilmember Pyle has under 2 are kind of routine -- are part of a routine that we work with when we have contractors that work with the city. It's not that unusual, the things that we're talking about here. And I guess I'm asking you, counsel.

>> The biggest difference is, and this is a crucial threshold that you're crossing at this point, is when right now there is no other way that records that are in the hand of another person can be demanded by members of the public. The city can demand those records but at this juncture, through this policy, through this narrow set of contracts that you're talking about, you're creating a novel right here for a member of the public to ask the city to go get records from somebody else and to actually give that right to the to a member of the public. And that's the biggest difference about what you're doing here today. Other than that, the records, we always require them to keep records. We always, as the city, have the right to get the records. What you're eliminating here is the discretion of the city to say no, we don't need to get these records. You're saying by giving the member of the public to demand the records from the city then the city loses the discretion, has to get the records from the contractor to then give it to the member of the public who demanded it. So in terms of that question that's the only difference. As the City Attorney pointed out there's a cost differential as well. You're creating a cost differential. We can only charge for the cost of making those copies, not for our time, getting the information from the company. Or if the company should resist that request, our dealing with that. And of course, the company is going to have their time that they're not used to in having to -- one way to simplify it is to get all the records you would ever want from the company as you go along. Then they're already in the possession of the city and if the member of the public asks for it, we would just give it to them. But, you know, until we -- until this policy is implemented it's hard to tell what would be the effect of doing this.

>> Ed Shikada: Councilmember Kalra, members of the city council, Ed Shikada, deputy City Manager. One other piece I would like to note, and the conversation hasn't really gone here, but to the extent that it speaks to the cost of complying with this provision, that as a practical matter, where staff, under typical public records act requests, spends a great deal of time and effort, it would not be on specifically records, let's say records of the performance of the service. It would be on what I'll loosely term not being an attorney, any writings, reports, correspondence, notes, e-mails related to the performance of a service. And based upon what's been described here, it doesn't appear that that is the intent of what might be written into an RFP. But because it's open ended I think it would be fair and appropriate to point out that if that's not the intent of the council, it might be useful for us to clarify this at this point.

>> Mayor Reed: Are you done, Councilmember Herrera?

>> Councilmember Herrera: Question, I would like to, I think we have a little further discussion about that. It is certainly not my intention to have it open-ended with every note, e-mail associated with that.

>> Mayor Reed: Councilmember Chirco. Anyone else wants to speak? Go down the line here.

>> Councilmember Chirco: I'll admit to be thoroughly confused by everybody who spoke.

>> Mayor Reed: By everybody?

>> Councilmember Chirco: Yes, across the board. Rick, I thought I heard you say that we have Nancy's memo, as you interpreted it, called out what we have traditionally requested, of our vendors or our

contractors, and there are precedents within the city, so I listened to Brian and I listened to Ed and I listened to Rose and then I listened to you. Could I ask for simple answers?

>> City Attorney Doyle: The contracts vary in terms of what's required. But it's not out of the ordinary for us to have requirements that they maintain documents that we can get access to. As Brian pointed out, though, we do not require that if they have it, and we don't have it, the member of the public comes, that we're going to get it for the member of the public. We don't have a right to it but we don't have an obligation to get it. And that's going to change, if the policy is adopted. To the extent there are contracts or documents which would be identified in the RFP, as I understand the amendment to the motion, what types of documents that we would then require those to be provided, or providable I guess if there were such a word to the public upon request no different than if somebody made a public records act request to the city for city documents.

>> Councilmember Chirco: So it sounds like, you know, in the RFP, you can make that part of the RFP, that these documents can be requested by the public, and the vendor would be expected to provide them for the cost of duplication, can that be part of the contract?

>> City Attorney Doyle: I think we would have to do that as part of the contract. That would be included as part of the cost of the contract, but yes, it could be.

>> Councilmember Chirco: I think if -- that would be a logical place to go. That won't mean there won't be exceptions. But I liked what I heard you say, to the best of my understanding, apart from what I've heard from everybody else, in the RFP, as a cost of the contract, a lot of this can be cleared up, as to expectations. Vendors are cognizant that they are dealing with a public entity. And this is not a surprise. There are obligations that go with public dollars and it is not a totally new experience to the city. Now while it might be uncommon, it is not totally new?

>> City Attorney Doyle: No, and the reason I'm interpreting it this way, in hearing Councilmember Herrera's amendments, the intent is to make sure everybody understands up front what the requirements are so there is certainty as much as you can get. We may have disputes over whether something is a trade secret or we may have disputes over certain things as they come along and a lot of times anything new you don't know until in you are down the road and we'll deal with it. But I think we can manage this. As I said initially, I take this essentially as no different than an agency situation, where we're requiring people that have a contract with the city essentially step into our shoes vis-a-vis identify documents. Sorry about that.

>> Councilmember Chirco: Thank you for the apology. I'd like to disclose that I met with Bob Brownstein, any new thing has to begin somewhere and this has certainly had the time, sweat and tears involved in it. And I will be supporting Nancy Pyle's memo. Let the journey begin. And then let's correct course as required, as it unfolds. And stop confusing ourselves. Thank you.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. I just also wanted to disclose that I have met with Bob Brownstein and wanted to take this opportunity to thank Councilmember Pyle and Councilmember Kalra for your leadership. I'll be supporting the substitute motion.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I also met with the chamber, labor and the nonprofit groups that were involved with this. I'd like to go over a couple of points that basically are driving plea up the wall. Number 1 what we're doing today is trying to help with policy regarding our outsourcing. Two, there was never a clear consensus, unless my ears are not acting right, between 4 and 5. Some wanted 4, some wanted 5. The reason, Ed, it's always been between 3 and 5, would you agree with that, I mean that's basically, and your staff wanted 5. My intervention as a chair was to say, what about -- we don't

know what we're going to get in the next year and there may be some 4 FTEs, it's better to get as many as we can to see how this is all working we need to test as we go. And then it is -- in reference to the confidentiality, obviously this is taxpayer dollars, the library situation wasn't I think brought up as a scare tactic at all, it was brought up as a very viable situation. We don't want to have duplication of those situations. And Brian Doyle, you mentioned that the only difference is that this is clarifying the particulars of all of this. But I would beg to differ with you in that another huge difference is that records will be kept, we will be -- by us, it doesn't mean the businesses have to go out of their way more than they already will, to verify what we're doing to really take a look. I mean, Chicago knows that they saved 1.2, how much was it, million dollars? Because they kept good records. That's what we're going to be doing, as well. And there are -- the report-back as far as I'm concerned is absolutely vital. So that would be another difference that I see in this proposal. And so with that, if there are any other questions, I'm ready for those. Thank you.

>> Mayor Reed: We still have a few councilmembers who want -- comment or have questions. Councilmember Liccardo.

>> Mayor Reed: Mayor, I didn't disclose, I think I've spoken with Pat Saucedo, a long time ago or even longer ago with Bob Brownstein. I guess the last question I'll ask, I promise, I won't ask any more, is just to get some clarification about how limited or expensive this RFP can be. Let's see can in our RFP we list five categories of documents that must be kept and of course disclosed to the public. And then, lo and behold we get a public records act request that says any writings, documents, et cetera, as Ed Shikada suggested. So we've got a whole lot more than these five categories. So are we bound now to respond to all those categories that's in the PRA and now, is that company bound to respond to all these categories to documents?

>> City Attorney Doyle: As I read the motion, no. The motion would require that identify -- documents that would be subject to disclosure need to be identified in the RFP process which would be, then, carried over into the contract. To the extent it's every piece of e-mail and that that's not included in the contract, ultimately, I don't see that it's required to be turned over. That's something that -- that's how I understand the motion.

>> Councilmember Liccardo: And we're not under the hook under the public records act to produce those .

>> City Attorney Doyle: Unless we have possession of those documents. As I understand it. Brian, do you have any --

>> No, I agree with that, that the only way we could get this from the contractor is put it in the contract. We would have to specify in the contract that they had to do that.

>> Councilmember Liccardo: Thank you.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Just want to disclose this, I met with Bob Brownstein.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Well, after listening to all this I just wanted to point out a couple of things. One, I think Pierluigi said it really clearly. It's kind of a philosophical perspective of how you're going to spend your money and what you're going to get with your money. We can put anything we want in an RFP and we can ask businesses to do a litany of different things if they want to do business with us. And all it will simply do is raise their cost of doing business and raise the cost to the citizens of San José. And again I think we have something that's vague that's very difficult for people to comply with. We know how difficult it has been for the city and how expensive it has been for the city to respond to public records requests. We hear them in Rules and Open Government Committee meetings all the time. And

we've actually turned some down because of the significant amount of resources it would take us to try and create the records that are being requested. And we're basically telling people if you are going to bid on our contract you get to get all that stuff too. And we could ask Lee, although I won't put her on the spot now, how many times she has been inundated by public records act request just to see how much time they can take up and how many volumes of data they get. And if there's not clear delineations like there are in the mayor's memo and no ambiguity like there is not in the mayor's memo then you open it up to those issue. And I think you're going to have every reason in the world for a company not to enter into a competition with our city employees to provide a service. And Pierluigi said it. We have limited resources and they're becoming more limited every single day. And you have to ask yourself how do we want to spend those dollars? And I remind people, we exist in the City of San José to provide service to our residents. And if we can't provide the best services with the best delivery at the best prices then we're cheating our taxpayers and our residents who are relying on us to make good decisions. And I think we're going to complicate the matter and make it more difficult for us to do so as we enter into increasingly more difficult financial times so I hope my colleagues do not support this.

>> Mayor Reed: Councilmember Herrera I sense we're winding down.

>> Councilmember Herrera: I just want to disclose that I met with Bob Brownstein and Pat Saucedo.

>> Mayor Reed: Okay, we were winding down. Because I have no more requests to speak on this matter. So we have a motion on the floor that is the substitute motion by Councilmember Pyle that has been modified through discussion today. Anybody else want to speak on it? On the motion all in favor, opposed, opposed would be Oliverio, constant Reed and Liccardo so that passes on a I think everybody is here a 7-4 vote. So we're done with that one, folks. Don't everybody leave. We still have a couple of things left if you want to stay and you can come back tonight! [Laughter]

>> Mayor Reed: Our next item is, 6.1, report of the transportation and environment committee for October 5th, 2009. Councilmember Liccardo is the chair.

>> Councilmember Liccardo: The minutes are included in the packet and move to approve.

>> Mayor Reed: We have a motion to approve. I have a request to speak on 6.1 (d) 4 which I believe is part of the transportation committee reports. If I've got that right. So Richard Calhoun and Linda Kincaid.

>> Good afternoon mayor, members of the council I'm Richard Calhoun, I'm speaking as an individual. I'm asking that the council not do what they've about to do which is accept the staff's report on formaldehyde in the green building ordinance. The staff report fails to address and is actually inconsistent with available public data. The staff report incorrectly claims that the 2010 mechanical ventilation, combined with the 2012 CARB phase 2 relation will solve the formaldehyde issue. It will not. Research funded by the California Energy Commission and CARB shows that 98% of California homes fail to meet the level of formaldehyde recommended by the state of California. That the 2010 forced ventilation system that is going to be effective in January is inadequate. The researcher concludes that air contaminants with indoor sources such as formaldehyde can be significantly elevated. CARB acknowledges that with homes the air change rate is generally lower and the occupancy longer and therefore the actual concentration of VOCs including formaldehyde emitted from the materials are likely to be much higher than predicted and warns that the 1350 model should not be used for certifying for residential applications. Yet that's exactly what the staff report is going to do. The California Department of Public Health says it is wise to measure the levels of formaldehyde to ensure levels will be no greater than 25 parts per billion. Staff ignores that. U.C. San Diego did a research project on commercial buildings. 10% of the occupants that reported an increase in sick time were in energy star buildings. The 45% that said no change were in energy star buildings. The 45% that showed a decrease in sick time were in LEED buildings. What's the difference, LEED requires testing of indoor air. The Build It Green

and energy star do not. Go ahead and do what you're going to do which is pass this, do nothing, your residents will be sick and you're not protecting them. Thank you for your time.

>> Mayor Reed: Linda Kincaid.

>> I'm Linda Kincaid. I'm a certified industrial hygienist specializing in toxic gas exposures. Yesterday I talked to a woman so ill she has difficulty working enough to pay her medical bills and pay her mortgage. Many of her neighbors in that same new development are also ill. They have chronic headaches, sinus infections, asthma, burning sensations in their mouths and lungs, skin rashes, sleep disorders, chronic fatigue, memory loss, and a number of their pets have become ill and died. A businessman living in that development travels frequently. His symptoms disappear when he travels, they return when he comes home. A nurse in that area became very ill and unable to work, she lost her home. However now that she's living in a different location, her health has improved and her symptoms have disappeared. A simple test before people move into a home can determine if that home could make them ill. This is a formaldehyde test package. You start the test by opening the badge. Keep doors and windows closed. Four to 24 hours later you stop the test by closing the badge. It's that simple. Send the bag back to the laboratory, a week later you get a report on formaldehyde concentration in room air. This test can be done by a building contractor, building inspector or by a member of Build It Green or a green point rated certifier. The cost of the test is less than \$100, and it is much less than the cost of illness or the cost of losing a home.

>> Mayor Reed: That concludes the public testimony in this matter. We have a motion to approve. I've got a question for Joe Horwedel on this matter, since I haven't seen, wasn't at the committee, isn't part of the committee. We have a question from Build It Green, specifically on this item, if Joe Horwedel could share this with us. I'd like to know what they have to say on this issue.

>> Joe Horwedel: Thank you, Mr. Mayor, Joe Horwedel, director of Planning, Building, and Code Enforcement. At the committee meeting we did have some representatives from Build it Green, which is one of the green building standards, to address this issues that were raised. And in our staff report we did walk through that there is a number of regulations that are moving through. You heard some of that. That the state is dealing with regulations that both LEED and Build It Green have indoor air quality concerns that they're concerned about indoor air quality. Neither one of them have them as mandatory. It is something that what the developers, the builders can pick from a number of different points to make their buildings green. But that in staff's opinion this is an issue that really needs to be dealt with at the state level, that the manufacture of these materials is something that happens at a regional level, national level that for San José to set standards that are different than what is going on in San Francisco or Modesto or San Diego is really not going to be solving this issue. And if the state is dealing with this, their standards are being actually implemented for plywood and particle board that do use the formaldehyde so that those levels will be dropping. Those have new standards that are -- the first wave are kicking in this next January. That the other piece of that is, where our staff go through and look at buildings, the building -- we don't technically issue building permits for cabinets. So a part of what a lot of these materials are coming from and the issues that are being raised about formaldehyde isn't something that the city has control over. It is being dealt with at the state level and that is best place to deal with it.

>> Mayor Reed: Thank you. I wonder if the maker of the motion and second would add a referral to staff to legislative staff to track it and monitor it and bring us any action we might need to take, supporting legislation or any other action at the state level as a process of building our state agenda.

>> Councilmember Liccardo: I'd be happy to do that.

>> Mayor Reed: We'll continue to work on that through that process. That concludes the public testimony on that. We do have a motion to approve with a referral to the staff. All in favor, opposed, none

opposed, that's approved. Taking us to item 8.1. Actions relating to the gaming control fees and operations.

>> Move approval.

>> Second.

>> Mayor Reed: We have a motion to approve. I'd just like to double-check the maker of the motion, I assume that is in reference to the memo that I have out dated October 9th, 2009?

>> Yes.

>> Mayor Reed: Which is ten items to give staff some direction. I just like to speak to that for a moment. I got engaged in this, I don't know, six months or so ago, when there were two bills moving through the state legislature that would have a negative impact on City of San José and our ability to regulate card rooms in the city. First was an effort to supersede our permitting with licenses being issued by the State. And the other was to allow card rooms to move out of the City of San José, not only escape our regulation but also not pay revenues to us under our system. So our staff in Sacramento, Roxann, is here, she and our legal staff and our city staff and I got engaged in working the legislation through our representatives in Sacramento. So senator Corbett was carrying one of the bills that had originally been proposed by senator Yee, Rick Doyle and I and I think Roxann all went to meet with senator Corbett to talk about her bill, what the issues she saw, and why she was carrying the bill. Senator Florez have another bill that was working its way through the committee. We had several people from our staff, including Roxann Miller and member of the city attorney's staff up testifying on that bill. And I ultimately did meet with Senator Florez to talk about his concerns, his issues, and in trying to avert whatever action the state was likely or at least attempting to take, I thought we ought to make some changes in our policies, our procedures, and those are outlined in my memo with the 10 recommendations, several of which are really referrals to staff to continue to work on problems and issues. So I'm hoping this will be sufficient to give us the breathing time at the state legislature so we can continue to have effective legislation of card rooms in San José. Cost effective regulation because cost is one of the issues that we are concerned about. And that we will continue to get the general fund revenues, which as the staff memo points out, there is actually a nice list in there of sales tax compared to the card room revenues, and the card room revenues are substantial. \$13.5 million a year plus the fees that we charge to pay for the regulatory system in excess of \$2 million a year. And then in addition, the card rooms are now setting aside a million dollars a year to go towards dealing with problems of addictive gambling. So we have a significant revenue source that's contributing a lot to our General Fund that we're trying to protect. We're also trying to protect our ability to regulate here locally and control what goes on in our card rooms which there are 90 some-odd other card rooms in the state, that fall under a different regulatory scheme, not as good as ours, ours is definitely the best in the state. And so these recommendations I put in front of the council are to protect our interests in maintaining our ability to have these card rooms in the City of San José, regulated by the City of San José, generating revenues for the City of San José. See if the City Attorney had anything to add to what's happened.

>> City Attorney Doyle: Mr. Mayor, members of the council, I would want to add that the ordinance that we would come back with, we need to run it by the State first, under state laws, so we will do that. It might delay the time coming back but we'll do it as soon as we can. It is some that we need to run by the state first. I also wanted to note, because you noted the efforts in Sacramento. Assistant chief Katz was especially helpful especially in regards to the Florez bill and working with us to keep local control.

>> Mayor Reed: Thank you. Councilmember Oliverio.

>> Councilmember Oliverio: Mayor, I want to thank you for your diligence in safeguarding the General Fund revenue. People can have their opinions on this topic, but at the end of the day, it is a big chunk of

money that funds city services. Thank you.

>> Mayor Reed: Anything else on this item? I have one card from the public to speak on this item, I'll take the public testimony at this time. Ross Signorino.

>> Ross Signorino: Thank you, Mr. Mayor, members of the council. This issue has been kicked around long long time ago in the old City Hall with mayor Gonzales who tried to get rid of the card rooms, obviously unsuccessful, because the card rooms are still here. And obviously with the budget situation we have they're providing us with some badly needed funds. And we're overlooking a lot of things. When the card room opened up, 101 that is, opened up, the crime rate within a mile radius of that card room went up in the neighborhood. And this is a statistic I believe came from the FBI, I'm not so sure anymore. But nonetheless, we could talk about what is bringing into our budget, but in law enforcement, what it is costing us, that is an important thing that has to be understood. Councilmember Chu sometime back mentioned that to bring someone to trial and go through the court process and everything and arrest process, and -- is far costlier than having the card rooms here. Now, Mr. Mayor, you just mentioned they're all over the state. Gambling will go on as a lot of other things. I have nothing against gambling but we have to look at the economics and the true cost of what this is taking us, how this is stretching our police force, limited as they are and this, again, is a problem. And put \$1 million aside for counseling and addictive gambling is all very well and good. But the cost is quite a bit. We have to look at the thing in its entirety. Not just one little site that brings \$1 million to our budget. Thank you.

>> Mayor Reed: In fact they bring \$13.5 million to our budget. Deanna Santana, you might have something to add that I'd like to have you talk about because I know we have a regular meeting schedule set up with the card rooms and you're working with a work plan and bringing things back, maybe you should talk about that.

>> Exact. Consistent with Rick's comments, we did set a meeting, aligning calendars is very difficult but our first meeting is November 20th. In the supplemental memo I suggested we return in November. We want to work in alignment with the card rooms, we might come back in December-January time frame.

>> Mayor Reed: I know things will take a while but I thought it was important for us to start the ball rolling on some of these things so we can demonstrate to the state legislature that we're moving ahead. So I think the delay of taking it to the state regulatory authority I don't think will be an issue once the council's taken action today we're moving on it. I think that will be satisfactory to our senators. Any other comments or questions on this? I have no other cards from the public. We have a motion to approve. All in favor? Opposed? One opposed, Councilmember Campos. Any others? Okay, that was approved on a 10-1 vote. Next is item 8.2, our state Homeland Security grant program. We have a motion to approve by Councilmember Constant. Councilmember -- Vice Mayor Chirco got the second. I have no requests to speak on that. All in favor? Opposed? None opposed, that's approved. Taking us to the open forum. I have one request under open forum. Kathy Brandhorst, I don't see her hereof, open forum, we have no requests. We will recess until 7:00 p.m. See you then.

>> Mayor Reed: Good evening. I'd like to call this session back into order. This is the third meeting of the day for us today. We have work left over from the afternoon agenda we have to finish and some land use items as well. We're going to do something a little bit different tonight. Because Councilmember Pyle has some special guests joining us this evening. And we're going to invite members of pack 284, to lead us in the pledge of allegiance. Where's my pack? Can you all please stand? Everybody please stand and join them. [pledge of allegiance]

>> Mayor Reed: Thank you very much, pack 294. Lots of Webolos in that group. I met them earlier. We have a couple of ceremonial items that we're going to do tonight before we start the business items. So I'd like to take that up first and like to invite Councilmember Campos and members of rocket ship Mateo

sheedy elementary school to join me at the podium. Today we're recognizing rocketship Mateo sheedy elementary school for being the highest performing elementary school in San José and Santa Clara County. They are in Councilmember Campos's district. [applause]

>> Councilmember Campos: Tonight we are honoring the Rocketship founders, faculty and students for their remarkable achievement. This year Rocketship Mateo Sheedy Elementary School achieved a score of 960 -- yes, go ahead and clap -- on the academic performance index. This represented a 35 point increase over last year's score. What a remarkable accomplishment for all of you! [applause]

>> Councilmember Campos: This great achievement took a great deal of dedication and education. Not only from the faculty and academic directors but also from the students and their parents. At this time, I would like to ask rocketship parents and students to stand up, as you did proudly, stand up so we can, in the audience, give you a round of applause for everything that you've done. [applause]

>> Councilmember Campos: For your commit -- [applause]

>> Councilmember Campos: For your commitment to education, and making sure that you succeed. At this time, I would like to congratulate you for all of your accomplishments and thank you for setting the bar for education achievement so high you are truly inspiring to all of us in San José. At this time, I would ask the mayor to present the commendation and ask one of the two people from rocketship, I'll let you choose who would like to say a few words. [applause]

>> A couple things. I want to thank first Councilmember Campos for making this possible, thank you very much. And I also want to thank Councilmember Liccardo for all of his support. Both have been industrial in rocketship's success in our movement. I also want to thank Mayor Chuck Reed. One of the things that's coming out pretty soon is San José 2020, which is going to be a movement to eliminate the achievement gap in San José. There's 60,000 students being left behind, and Mayor Chuck Reed and this council really forming and uniting behind it and make a change so that's really exciting. I want to thank, deeply thank the staff at rocketship, there are people who didn't want to come up who deserve to be up here as well. There are parents who we deeply love, and [Spanish] I don't know how to say it you about the achievement gap in San José [Spanish] I want to thank everybody. And to put some perspective on this, what our kids achieved, and our kids achieved this, they're the third best school, low income school in the entire state of California. So -- [applause]

>> So thank you to rocketship teachers, parents, thank you to this council and thank you to the mayor, because I'm excited for San José 2020, so let's get rid of this achievement gap and send all our kids to college. [applause]

>> Mayor Reed: Next I'd like to invite Councilmember Chu and representatives from the American legion post 858, Filipino American National Historical Society and Filipino networking association of Silicon Valley to join Councilmember Chu me at the podium. Today we're issuing a proclamation declaring October as Filipino history month in the City of San José. Councilmember Chu has some more to say about that.

>> Councilmember Chu: Thank you, mayor. I'd like to thank my colleagues and the mayor to joining me and my barong to proclaim the month of October as Filipino American History Month in the City of San José. Filipino American History Month is the time to recognize the contribution made by all Filipino Americans in our community and to reflect on the importance of their rich history, culture and vast accomplishments. Earlier today I had the honor to sponsor a flag raising ceremony in front of the City Hall that's the fourth year that we've been doing it. And I wanted to thank Councilmember Nora Campos for sponsoring the first two flag raising ceremonies. I would like to also recognize the American legion post 855 -- 858 for being with us this afternoon as honor guards during the flag raising ceremony and the Filipino network association of Silicon Valley. Here with us, this evening to accept the proclamation is Ron

Muriara from the Filipino American network history society, Ron.

>> Thank you very much, councilmember Chu for sponsoring not only this year but last year's Philippine flag raising ceremony. Councilmember Campos, thank you for initiating in 2006, recognition of the Filipino, Filipino-American community in San José. This year is our proudest moment because in September, last month, or two months, was it last month? Yes, last month, state senator Leland Yee authored and it was passed in the state legislature to proclaim October 2009 and thereafter, Philippine history month in the state of California. We're very proud that now the state will be celebrating the valuable contribution of Philippines, Filipino Americans to California and we're currently working on national recognition of Filipino history month. We appreciate the dedication and commitment of Mayor Reed and City of San José. In talking with my colleagues in the United States, the City of San José is the only city that actually does a flag raising and a proclamation of this type in honor of Filipino American history month. So thank you for setting the bar high for all our other chapters. Thank you, again! [applause]

>> Mayor Reed: We're now going to take 3.8, Sunshine Reform Task Force recommendations on law enforcement records, police department statistical reports and fire department statistical reports. I need to disclose that in preparation of this meeting, I or my staff have spoken to Kerry McClain of YWCA, Pat Mitchell from Silicon Valley Faces and Bobby Lopez with the SJPOA and many, many others along the way in getting prepared for this evening, tonight. We'll do the staff presentation or a version of staff presentation differently than we usually do because we have other participants. We will hear first from Tom Manheim, will talk about the process and things that have been done and recommendations going forward. We'll hear from Sunshine Reform Task Force, at least one or two of the members are here and then we'll hear from the District Attorney and then we'll come back to Chief Davis and then we'll take public testimony after those presentations. So with that, I'd like to turn it over to Tom Manheim to begin the presentation.

>> Tom Manheim: Thank you, Mr. Mayor, councilmembers, Tom Manheim communications director for the city. Before I begin I'd like to take a brief moment to thank the task force in general and Bert Robinson in particular, who as the chair of the public records subcommittee has put endless hours on this subject and remained committed in the end, and we haven't always come down in the same place on the issues, but I very much appreciate the way he has gone about this and it has been constructive and helpful. The item before you is probably one of the most contentious issues that the task force faced in one of its efforts to add transparency to San José. There are three proposals before you, the police records proposal, proposal for police tax reports and a proposal for fire statistical reports and I will go through all three of them. The police records has certainly been a subject of significant public debate. I think lost in the debate has been the fact that there is really very little difference between the Sunshine Reform Task Force proposal and the proposal that is forwarded from the Rules Committee, regarding what information would be disclosed and what information would be withheld when a records request comes in. They go about getting that, getting to that in a different way. But the actual information we think is fairly similar. What is very different, however, is the form and manner in which that information would be released. Under the task force proposal, documents would need to be redacted, and there are extensive numbers of documents that would require redacting. Under the Rules Committee proposal, the summaries could be created, which would provide the information that's been requested. So while the form is different, it's a very significant difference, and it's especially significant in the world of law enforcement. So let me start with the sunshine task force proposal. To their credit, the Sunshine Reform Task Force and the subcommittee worked very hard to address law enforcement concerns by creating exemptions for information that should be released. They held numerous meetings and throughout that

process as they heard concerns raised they crafted exemptions that attempted to address those concerns. Under the Sunshine Reform Task Force proposals, all police records would be subject to disclosure. However, the following information could be redacted, and it's listed here in front of you. Information that jeopardizes safety of any one person, jeopardizes the completion of an investigation, to protect investigative confidential techniques, as well as to prevent an unwarranted invasion of privacy. The police department did have a number of concerns about this, even with those exemptions that were added, there were a number of concerns because the term -- first off the term police reports is not defined. Therefore it's subject to broad interpretation which was a significant concern. The manner of the disclosure which I mentioned earlier was a significant and key point for the department, because rather than crating summaries when you go through the process of redacting, it raises two concerns. It -- redaction is a significant resource-intensive process. More importantly the opportunity for errors in that redacting process are high. And in the world of law enforcement errors or the consequence of errors is very significant. Finally the department was also concerned about the impact of these proposals, both on the willingness of community members to come forward and cooperate with investigations, also for other police agencies, partner agencies to share information with the police department. As a result of these concerns the staff proposal was to continue following the CPRA, the California public records act. I do want to take a moment just to highlight the extensive outreach and review that this has undergone. The task force met over a period of more than a year, 14 months. There were -- there was a day-long panel discussion. There were numerous task force sessions on this as well as uncountable subcommittee meetings where these were -- all of these were discussed in detail. The Rules and Open Government Committee also held a special meeting devoted to this subject, and then on five other occasions there was public testimony provided by a number of folks, and the staff was given additional direction. Many of the speakers supported the original task force proposals. They're here tonight and I know you'll be hearing from them shortly. Members of the law enforcement community as well as with victims assistance organizations, raised significant concerns. I want to highlight a couple of those. The Attorney General for the State of California sent a letter, I'm quoting now, "this could harm public safety and privacy interest." The letter went on to note that requirements for extensive review and redaction of documents would increase the possibility of inadvertently disclosing private information such as the identities of crime victims and would impose significant burdens on law enforcement agencies. Similar concerns were raised by the District Attorney's office and other law enforcement groups. And then victims' groups, some victims' groups raised the concern about the need to protect victims of crimes from having personal information disclosed. So how do we get to the current proposal? As Rules considered all that they heard, at one of those meetings, task force representative Bert Robinson raised the ambiguity of the California Public Records Act. The CPRA lists information that must be disclosed and that information includes disclosure of the factual circumstances surrounding the arrest. As Mr. Robinson pointed out, factual circumstances is an ambiguous term, and he suggested we needed some of the language beyond what's in the current public records act to address that. So staff was directed to work with Mr. Robinson, with the police department, to see if there was language that could be crafted that all three felt would clarify what information should be released in response to the factual circumstances requirement. There were numerous meetings and the resulting language is here. The department would release the type of crime or activity involved, actions that constitute the elements of a crime, whether the suspect is known or unknown to victims, whether incidents appear to be gang related and on that one it would be up to the San José police department because there were times when the police department would frankly not want that information to be out there. Whether special force or special resources were used and whether the suspect was arrested. This language is intended to

remove the ambiguity that is contained in the California Public Records Act which simply says you must disclose the factual circumstances surrounding a crime or incident. I would just note that reaching an agreement on that language was easy compared to what followed. We had significant discussions with both the District Attorney's office as well as Mr. Robinson representing the task force, being very concerned about how this information would or would not be used. Essentially the DA's office was concerned that the police department would release all of the information identified in the guidelines and would ignore other requirements in state and federal law that certain information must be withheld. Mr. Robinson was concerned that the police department would limit what it released to the information identified in the guidelines, and ignore other state or federal requirements to disclose certain information. So we addressed that with the language you have here, that the police department will only release information that is consistent with all other obligations and limitations contained in the California public records act and in other state and federal law.

The District Attorney was very concerned that this language needed to also include a recognition of the privacy rights of individuals in California and so the additional underlying language there was added by the Rules Committee, including the right of privacy afforded to victims by the California constitution. So that is my introduction to police records. I'll now very briefly talk about police statistical reports and fire statistical reports. The task force recommendation for police statistical reports that was that two reports that had been produced in the past on an annual basis or at least attempting to do it on an annual basis, the use of force and vehicle car stops would be done on a quarterly basis and a third requirement was for pedestrian stops. The police department had two significant concerns about that. Since it does not current have an electronic management system, creating these reports is very labor intensive, very time consuming and as we all well know the department and the city is facing limited resources. Second, the department had questions about whether the information that they had been collecting and reporting was the right information to be using to inform the community about how the police department operates. As you know, there's been significant debate about different records, arrest records and demographic reports. It has been a subject of much attention in the local media. And the city has reached an agreement for the Consortium for Police Leadership in Equity, the CPLE, where they will come in and look -- give an independent review of our internal police practices. As part of that work, they have agreed to give us recommendations regarding what really is the right information to be gathering, the right information to be reporting to the community, so that the community really is informed about what the police department is doing. The Rules Committee recommendation then is to continue collecting the data that we have been collecting, but to defer publication of any different reports until the CPLE has had an opportunity to advise us on what information is the right information to be collecting and reporting. And then that item would go to the public safety, finance and strategic support committee. For fire statistical reports, the task force proposal expands the information reported, increases the frequency. The fire department is actually in the process of implementing a records management system, and so they have asked for and time to complete that implementation, so they really know what's involved in creating reports so the Rules Committee recommendation on fire statistical reports is similar to fire statistical reports that they would be deferred creating the reports until the implementation is completed and that would be referred to the same committee. And with that, I'm -- we'll turn it back to you, Mr. Mayor.

>> Mayor Reed: Okay, thank you, Tom. We'll next turn to the sunshine task force. I'm not sure who's going to control the testimony on that but I know Bert Robinson is leer and he'll probably talk. Ed Rast who was the chair of the committee and served long and tirelessly has been down here before but I think Bert Robinson is going to win the showing-up prize because he is here. And Virginia Holtz is here. Okay.

>> Bert Robinson: Thank you very much. Am I the only person here? I'm just making sure I don't use all

the time if somebody else would like it.

>> Mayor Reed: There you go.

>> Bert Robinson: All right, I want to start thanking Tom with his nice comments. One thing he said tonight, if it were true, that the proposal from the Rules Committee and the proposal from the task force were going to be releasing approximately the same information, I wouldn't be here tonight, and I think most of the people that are here tonight probably wouldn't be here, because information is what this is all about. I would like to begin the formal part of my presentation by reminding everyone that the Sunshine Reform Task Force went through to develop the recommendations. And I think I'll describe it in a slightly different way than Tom did. When the task force began its work on police records it had as its starting point a model sunshine ordinance that had been drafted by the Mercury News in conjunction with the league of women voters and the United neighborhoods. This ordinance was hardly radical. It was endorsed during the 2006 mayoral campaign by Chuck Reed. This language on police records was modeled on that of other states include Florida, but it was considerably more aggressive language in terms of disclosing police records and what you have before you tonight. The task force went through a long process, a very long process of collaboration. We worked with the police department. We listened to the concerns of community groups who wanted more police openness and the concerns of community groups who were concerned that sensitive information not be disclosed inadvertently and we changed the proposal considerably. We added protections for witnesses, juveniles, and victims. We jettisoned proposals to open up the records of investigations after they were closed. We exempted completely sex assaults and reports that contained details of domestic violence incidents. This particular protection, regrettably, is not listed in your staff report, and thanks to Councilperson Madison Nguyen for pointing that out to me. We allowed the department to withhold records to ensure safety, protect privacy, maintain the integrity of an investigation and we came up with something that in the end received a unanimous endorsement. This was a contentious issue during the deliberations. But in the end on a task force that rarely agreed unanimously on anything, this was not contentious. After the vote I personally went back to some of the victims rights groups that had engaged the process with the task force and asked them if they felt that their concerns had been heard and their suggestions incorporated. They told me that they had. Politics being what it is, not all of these groups have been saying that in recent weeks but the proposal retains the support of many groups that work with victims and you have received letters from some of them. At the time that this proposal emerged from the Sunshine Reform Task Force, the only significant opposition was from the police department and other significant law enforcement groups. We worked very hard to come up with a proposal that the department could buy into, but ultimately there was an irreconcilable difference. We wanted to open more police records to the public and they do not. And make no mistake, the proposal that is on your agenda tonight from the Rules Committee does not open up any new police records to the public. If anything I believe it will make access more difficult. There are a few things I'd like to say about some of the comments opposing this proposal have been made in recent days and are likely to be made again tonight. The first is that the proposal continues to be criticized for failing to include protections that in fact it does include. Mayor Reed said in an op ed this morning that it will not protect the safety of witnesses, but the proposal includes provisions keeping witness names confidential and any information that would endanger the safety of an individual. Some people have said our proposal will risk the privacy of rape victims. Reports on those crimes as I said before are explicitly exempt from disclosure. Secondly, there's been a suggestion made that this proposal will open up records to criminals. Councilmembers under existing law, criminals can get this information now and much more. The rules of court allow defendants access to enormous amounts of material about victims and witnesses, far more than this proposal contemplates. The only way to change that would be to

change the U.S. constitution. This proposal is an effort to open up some records, records that meet the proposal's strict criteria to everyone else. Who am I talking about? I'm talking about the prospective homeowner, who has heard that the house across the street has been visited by the police three times in the last two months and would like some details before he buys his new home. I'm talking about the east side residents who saw a huge disturbance at the local pharmacy night before last, and wonders. A family who wonders after a tragic mishap left a son dead whether police were told that their son was mentally ill before they arrived. And I'm talking about the residents of San José who wonder after a law enforcement official causes an accident why the police didn't do a sobriety test on the individual. The Mercury News asked repeatedly for a report of that and they were refused. State Department of Justice that the public learned evidence of a possible coverup that now has two San José policemen in danger of losing their jobs. Finally, when you listen tonight, please keep in mind that they are talking about reports that are routinely released around the country. Reports that many police departments in California will release, although the law doesn't require it. The police report on confrontation with Henry Lewis Gates in Cambridge was made public within days. That report certainly raises some questions about the officer's behavior. You can see why the department might have wanted to keep it secret. But they didn't. And in the fallout of that incident, for all the questions that were raised around the country, I never heard anyone say the Cambridge Police Department covered up the incident. The police fear that fear of sunshine will discourage the community from working with the police. The Sunshine Reform Task Force believes the opposite. The public will have greater trust in a police department that is accountable to them. Please bring a new era of accountability to San José. Thank you for your attention.

>> Mayor Reed: Thank you and I want to thank not just Bert Robinson but a lot of the task force members that spent a lot of time on all of the task force recommendations. This was just one of the more lengthy ones. We appreciate all of their efforts. Next we're going to hear from District Attorney Dolores Carr.

>> Good evening, Mayor Reed, good evening members of the council, City Manager and others. Thank you for the opportunity to speak on this issue from my perspective of the office which reviews police reports, decides whether to file charges and then prosecutes the cases in court. Unfortunately we were not included as part of the membership of the Sunshine Reform Task Force. We were made to come as a member of the public. And so our input was largely left to one or two minutes at the end of each meeting. We went to all of those task force meetings, because we were the actual end users in court of these police reports. So I think our experience is important for you to hear. Tonight, I urge the council to adopt the Rules Committee's proposal with one friendly amendment which I will mention later. First, I will address my concerns about the sunshine task proposal. The sunshine task force's proposal is broader than any other ordinance or law. Contrary to what some people have claimed, the proposed broad disclosure rules are not followed by other states or California cities. Other jurisdictions routinely exclude ongoing investigations. No California city requires release of police reports before the statute of limitations has run or the case has been reviewed by the D.A.'s office. Under the current proposal before you, reports could be released before my office even has an opportunity to review them to determine if charges should be filed. The California public records act was the result of much legislative study and has been the law for 40 years. As our California Supreme Court declared, about the CPRA, it is, "a detailed statutory scream for detailed access to and disclosure of police records which serves as a safeguard against improper dissemination and use of records." We believe that the proposed ordinance is unconstitutional. This is because the investigation and prosecution of state and criminal law are statewide issues of concerns. And local owners which conflict with the state law must yield. This is called the doctrine of preemption. Requiring the release of reports beyond what is required by the CPRA violates

the law. The attorney general has offered us the informal opinion that San José may not legally enact the Sunshine Reform Task Force's proposal because of this doctrine. In addition, the California constitution guarantees privacy. Courts have held that victims have a constitutional right of privacy, and Marci's law which is the victim's bill of rights which passed by initiative in November 2008 reinforces that. But the right to privacy does not end there. Courts have also ruled that arrested persons have a constitutional right of privacy. Now, why is that? It is because of the presumption of innocence. Information regarding arrests or accusations made against a person which are investigated by police does not become public until charges are filed against that person. It is at that point in time that the defendant's right to privacy is outweighed by the public and the media's right to know. My office reviews approximately 45,000 cases per year in Santa Clara County. We reject, that is, we refuse to file complaints, in approximately 17,000 of those cases. And that is because there isn't sufficient evidence to prove that the charge should go forward in court. So you are contemplating releasing information on those cases to the public and the media. For what purpose? But we should not stop there. The police department does not bring every case where an arrest or an accusation is made to my office for review. They have thousands of cases which they don't even think warrant the D.A. to review them. So let's add those cases to the 17,000 county wide that we review, and reject, which would then become, in the public eye. And again, I ask, for what purpose? There is no protection for these people accused of crimes. Release of this could ruin reputations, careers or relationships. I'd like to quote from a California court of appeal case. Public policy supports our conclusions. Police investigations contain a vast amount of raw or half-baked data gleaned from witnesses of varying degrees of reliability, veracity and bias which could prove ruinous to personal reputations careers or relationships, in released to the public. Police reports could find their way onto the Internet or Youtube within hours, and the person whose document, whose police report finds its way there has no way to respond to the accusations or to clear his or her name. The attorney general has written Mayor Reed concurring with the objections that deviate from the CPRA regarding police records because they could harm public safety and privacy interests. And I think Mr. Manheim has quoted from that letter. But the conclusion is, from the attorney general's office, the PRA strikes a careful balance between the public's right to information and the confidentiality of law enforcement investigation and records. We believe this has worked in balance for many years and the city should decline to deviate from it. Well, the answer from the task force is to have exemptions to the release of information. And I would like to highlight several problems with the proposed exemption. Police can't withhold records, even if they will be used for an illegal purpose. And we talked a lot about that at the Rules Committee. An employer or a landlord or even a defendant accused of a crime could come in and get information. Because, as Mr. Robinson indicated, perhaps they just want to know why the police have been called to the neighbor house. But if that person was not charged with a crime, if that person has a private reason for calling the police because perhaps, there's a matter of public safety within the family that he or she does not wish his neighbors to know, let alone the public, through the Internet or the Youtube, that information apparently, he loses his right to privacy. Because any requestor remains anonymous. There is no reason to be given for the need for this police report and I'm concerned that landlords or potential employers could misuse this kind of information. Redaction for privacy is an inadequate solution. You can redact a name but under some of the exemptions in the rules you don't redact the address. Well, one can still figure out who made a complaint, and that still invades the individual privacy because you can still figure out who lives in that home. While some sexual assault victims are protected, victims of other crimes such as sexual battery, indecent exposure, gang violence and felony threats are not. There is an exemption for domestic violence supplemental reports, but what about the initial report? Identifiers of witnesses and victims are often contained there. Lastly, the proposal violates public policy. Exemptions don't provide protection to those

who do not want their information released. There is a section that talks about an unwarranted invasion of privacy. What's that? Who decides that? There is no provision for anyone to even check with a victim or a witness first. The proposal also mentions the criminal defendants already have access to police reports. That is true. And the reason is, their case has been filed. It is in court. It is a matter of public record. But not so for the people we are talking about here, who have not been charged with a crime. The D.A.'s ability to prosecute crime will be adversely affected. We may lose cooperation from some victims and witnesses because as the Court of Appeals said without the assurance of continuing confidentiality, potential witnesses could easily be dissuaded from coming forward. Publicity shy witnesses will be wary and some victims won't report crime. Sometimes to prove a case we must be able to show a witness or a defendant had no access to certain nonpublic information. This is especially fortunate in cold homicide cases. Another result may be to enable suspects to invent stories to explain away evidence thus far gathered and to intimidate or otherwise influence potential witnesses. The mayor and staff recommendations address these concerns, and we've discussed these at length in the Rules Committee. But I have one minor modification I would like you to consider as I have discussed here tonight and elsewhere, privacy is for all people not just victims. I propose in the last paragraphs of 6.1 that the words "and others" be added so the last sentence or the last phrase would read, "include the right of privacy afforded to victims and others by the California constitution. In conclusion I urge you to decline to adopt the task force proposal. The attorney general, the police department, and police departments throughout the county and the city manager's office have urged the city not to depart from the CPRA. Instead, I urge you to examine the specific areas in which the public has a legitimate interest, and let's find a legal way within the law to meet this need. You must balance this letting interest that the public and the media have against the interest of the police in solving and prosecuting crime as well as individual privacy rights. The mayor and the staff recommendations with the addition of privacy for all persons accomplishes this. Thank you for your attention and if there are any questions, I'd be happy to answer them.

>> Mayor Reed: We're going to take up questions later. I'm sure you're not going to leave just yet. We're now going to turn to chief Rob Davis.

>> Rob Davis: Thank you Mr. Mayor. I would like to begin my part of the presentation by thanking those who served on the Sunshine Reform Task Force. I do indeed know this task has not been an easy one due to the sensitive nature of the information contained in police records. I would also like to reiterate the willingness of the San Jose Police Department to facilitate the release of the information to the public whenever possible, including a number of occasions when the law did not require us to do so. This would include the implementation and release of information from the voluntary vehicle stop demographic study which I designed and implemented as a captain ten years ago. As well as the creation of the use of force reporting information that we initiated just a few years ago. We also teamed up with a company called crimereports.com, to become the first major city to post all of our 911 calls for service data on the Internet, thereby allowing anyone to access and search the call data we receive each day. We are no strangers to being innovative in providing information to the public. However I would like to outline for you this evening some of the main concerns that are very troubling about the proposal that has been brought before you from the task force. My concerns are shared by the command staff at the police department and numerous other law enforcement organizations including the Santa Clara County Association of chiefs of police, the California police chiefs association, the California narcotics officers association, the office of the attorney general of California, as well as many of our partners who work in victims rights advocacy organizations. As has been outlined by Tom Manheim many years ago the California legislature created what is known as the California public records act or CPRA. While opening up greater public access to

government information, the CPRA goes to great length to carve out some expectations and protections for the release of police records. Due to the very sensitive nature of the information contained in those records. The exceptions to the release of records allows police agencies the ability to protect sensitive information that is contained in the narratives of the reports, and in case files of ongoing investigations. It is true that the CPRE does allow a police agency the ability to release some of the protected information if it chooses to do so, and this is usually done when release of the sensitive information might help lead to the arrest of a suspect, such as in the case of an abducted child. In other words, the ability to release some of the protected data, actually allows agencies to do so and it is in the interest of public safety. As such, one of the concerns we share about the proposal is that rather than following the CPRA guidelines which we clearly believe strikes the right balance between the operational needs of police agencies and victims privacy rights, with those who seek access to more police information, the proposal, for the most part that's before you, recommends opening up all police files and records to unfettered access rather than allowing us to provide a summary of what is contained in a given police report we would be required to provide copies of all the reports in a police file with redactions made of what on the surface appears to be the only sensitive information contained within the report. Therein however lies the main problem. While the task force proposal makes what appears to be very solid requirements for removing sensitive data such as a victim or witness's name, an address Social Security number and things like that from the report that that proposal would release, it is the narrative or the details contained in the reports that would allow anyone gaining access to the entire report the ability to gain additional knowledge that would in essence allow a reader to figure out who the victims and witnesses are. As well as know exactly what is said in any given case. This is one of the main reasons why the CPRA only requires the police department to release summaries of the incidents not the entire reports. We've talked about that a lot. I'd like to perhaps demonstrate it. We have a transparency, I believe that you can throw up there to try and highlight what we're talking about. What you see is a copy of a police report. This is an actual report which we took but we actually changed some of the detailed information that we're suggesting we wouldn't want to release so that even though the basic information follows the case that we're working, we've changed it so you can't figure out exactly where this is. Now if you looked at this report, this is just simply one page off of a report. This is a gang related crime. We would see for instance under the proposal that's before us that we would have to take this report and redact some of the information that the task force has asked us to redact. We would be removing the name where it says statement of victim Hernandez. Hernandez would be blacked out. Nine you see Hernandez on the page it would be blacked out. Any other information per the proposal by the task force would be blacked out. However there are significant portions of this report that would not be blacked out. For example without reading the entire report, somebody could get a copy of this report and simply read down until you get to the third to the last paragraph where it talks about one of the suspects is a Hispanic male who is 18 to 20 years old who wears a red tee shirt with a number 24 on the front. That is a significant piece of information that acts as an identifier for the suspect in this case. We also would know by reading the narrative of this person is the person has a shade tan and possibly has a black eye or an injury to one of his eyes. So someone getting access to the report would know that the guy in the neighborhood who usually wears 24 on a red tee shirt that has this shaved head and last couple of weeks has been sporting a black eye or injury to one of his eyes is most likely the individual involved in this case. If somebody wanted to do some retaliation it would be very easy to be able to use this information for that very purpose of retaliation. Again I won't go through this entire report but you can assembly see how there are other pieces of information. For example, we know the victim owns a motorcycle, he wears a blue belt, this is type of information of if you have any sense of what's going on in that neighborhood, you can pit information together that could be

dangerous for the individuals involved. But you can see also that this narrative should have followed the hands of someone whose motive is less than honorable, it does indeed provide detailed information that even with a small amount of knowledge to someone who might be involved in the case would allow a person to figure out the identity of those whose information has been redacted. Obviously this would not serve the victims or witnesses well, especially in cases of gang crimes sensitive cases where witnesses have been reluctant to come forward for fear of retaliation. Obviously this also does not serve law enforcement agencies well because it hampers our ability to keep detailed information confidential, that should a suspect become aware of what our investigators know, could work against us in our pursuit of justice. Moreover when detailed information about a case becomes come forward, since their statements will now be tainted as they attempt to make their statements now match with what they have heard in the public. There are additional concerns what's information about our undercover officer's activities, we are very concerned that people might be able to use reports to learn the identities of our officers, again, based upon the narrative and the details contained in the entire reports and the files which would be subject to release. We are also very concerned about getting access to the entire case file rather than the written summaries required by current law will expose police investigative reports to the court once criminal charges are filed, we are not required to provide such reports for cases that have not been filed as the D.A. also outlined. Yet the task force's proposal would require us to do so, as asked. This again could jeopardize a case in that we may release an entire report that we don't think is workable which after a suspect is arrested for yet another crime suddenly becomes a crucial piece of information in the other crime. This is especially true when you're dealing with people who are offering up information about other crimes because they've been caught for doing something wrong. I'd also just like to show you, I asked captain Kirby today if he would simply go to the robbery unit or gang unit and pick out active case files from one case in each unit. This is not by any stretch a hand selected cases where we are trying to find the biggest one we can find. One of these in fact is the homicide case that is ongoing. This would be considered but one of many files this size for a homicide, this is a gang investigation crime. To be required to go through and photocopy these reports and redact, try and get information out of the narrative that can be very harmful is obviously an administrative burden. And that's why the California public records act allows us to do summaries. We are also very concerned that once we have made even one mistake by missing something in the huge amount of redaction that the task force proposal would require, the potential harm that comes through a crime victim or witness will serve to have a chilling effect on the willingness of others to come forward in the future. We are also concerned that since this far reaching policy would only apply to the San José police department and not to the 300 plus law enforcement agencies in the state it could serve as a chilling effect on those agencies' willingness to share written reports with us due to the possibility of their records being exposed because we now have copies of them within our files. I also believe it is quite clear that information being released to the public through the CPRA is now being used and distributed in a way that no one could imagine when the CPRA was written. Once a police report becomes public you can never get the information back. We are beginning to see more and more evidence each day of how states that already have laws requiring the release of more information than required by our law are people are being exposed to more and more ridicule each day. Indeed just recently we received the qualify release of 911 tapes for a very tragic homicide case that occurred in San José. After listening to the horror contained in the recordings, I'd like to underscore the fact that I listened to those tapes and they were horrible. I directed the commander of the homicide unit to meet with the husband of the victim in the case to explain what was contained within the tapes. After hearing a detailed explanation not only did the husband choose not to hear the tapes himself he asked that we not release them to the public. Current state laws allow us to do that and so we

honored his wishes out of respect for his and his family's privacy. Another issue of concern is that because the proposal from the task force would require the release of nearly all the police reports in their entirety, the proposal by the task force would potentially expose those who have been written about in the police report or identified as a potential suspect. We just spent a great deal of time working with another task force to reduce the possibility that the arrest of an individual for being arrested as drunk in public, could serve to hamper that individual's later opportunities in life. It should also be noted that police reports contain all kinds of information provided by witnesses and suspects which is anything but truthful. Releasing entire reports means that we would frequently be releasing reports that do not contain factual information. Unnecessary and unfair ridicule. Remember the current law, the CPRA allows us to do the summaries and that allows us to ensure that what's going into the summary is factual. Yet under the task force proposal records could be sought that while obvious identifying information could be removed, those who read a little bit about the case could get involved after simply reading the narratives. I would like to reiterate that we have not rejected all of the proposals brought forward by the task force as has been outlined by Tom Manheim. We, and particularly Captain Gary Kirby, have spent a significant amount of time meeting with task force members to see if we could identify ways to streamline the records requests we get to ensure that we were getting the right information released in a timely manner and we have put those efforts into place already. This includes defining what is a police report and ensuring that the summaries provided of all -- that the summaries we provide contain all the required information. It is important to note that we also agreed to put information into the summaries that are not required by the YPRA. Including there such as the merge unit. This goes beyond what has been the status quo for how we release summaries. We are committed to doing our part to ensure that we release what information is required by law and to explore potential ways to expand upon what we release that will not compromise public safety. We at the police department however have to make the tough calls on a daily basis in terms of what we release and what we do not. Each time we receive a public records act request I believe we do a great job of balancing the needs for confidentiality in the criminal justice system with the need to provide the public with information. This very difficult task is not well served with a blank policy that would allow exposure of nearly all police records rather than following the well reasoned requirements of the current California public records act that provides for the concerns of public safety operations while balancing the public's obvious right to gain information. Indeed I wholeheartedly agree with the statement contained in the letter we received from the California attorney general's office which states, we concur with the San José police department's objections that the reports deviation from the standards could harm public safety and privacy. Specifically, the report's recommendation is to replace the standards would increase the possibility of inadvertently describing such as the identity of crime victims. Divert scarce resources from other law enforcement activities . The PRA strikes a careful balance between the public's right do we believe that this balance has worked effectively in California for many years and as noted by the D.A, the city should decline from deviating from it, end quote. I do believe the best of intentions, there's absolutely no doubt in my mind of that it's simply me in law enforcement who deal with that and investigation on a daily basis understand very clearly what the unintended proposal would mean for us. Indeed, on behalf of the police department, it is my hope that you would recognize that, the proposal regarding the release of public records by the task force is one of the most troubling public policy proposals for law enforcement that we have seen in our careers. That concludes my comments.

>> Mayor Reed: Thank you, chief. I'd like to take the public testimony at this time. Please come on down when I call your names so you're close tot microphone. We have places down here you can sit or stand. Sushmita Majundar, Sam Arosco, Sterling Leonard. Anybody else who wishes to speak, please get

in a yellow card. Sushmita, followed by Sam Arosco and Sterling Leonard.

>> Good evening. Thanks for giving me the opportunity to speak. My name is Sushmita. I have great respect for ordinance I think a greater transparency, and more of a partnership between the public and the police is an excellent thing and we just need to trust each other and be transparent. Thank you.

>> Mayor Reed: Sam Arosco, Sterling Leonard, Schuyler Porras.

>> Honorable Mayor Reed, city council. My family have operated iguana's for more than ten years in downtown. We must address the growing drug and truancy problems before things spin out of control. I've been active in our community and I've worked together with the church and the YWCA to collectively voice our concerns to the San José PD and also the San José State PD. I'm all for transparency, but I'm here today to request balance so that those who are sworn to protect us can do the job that they were intended to do for all of us. I believe we need to give the police discretion on what information is safe to release. It's gotten to the point where I will not allow my wife and daughters to come downtown at night alone because it's not safe. This weekend, a close family friend went out with his wife and his friends to celebrate his birthday. On his way to our restaurant he was assaulted by 12 youths and beaten unconscious while his wife watched in horror. They kicked him when he was down and fractured his cheekbone and he will require corrective surgery the police did what they could under difficult circumstances and were able to apprehend two of the perpetrators but still there are ten other out there. The city will pay a tough price for not protecting our streets and keeping our people safe because the people will not come down to downtown. Honorable Mayor Reed and councilmembers as our representatives I implore you to consider what happened this week and to my friend as a wake up call. This is just one incident of many and I trust that you will do the right thing for our community because people's lives are at stake.

>> Mayor Reed: I'm sorry, your time is up. Sterling Leonard is our next speaker followed by Schuyler Porras and Jeff Moore.

>> Good evening. I represent several thousand when public records are involved particularly those in the courts and the criminal justice system we must remember they aren't open merely to satisfy the curious. In repressive regimes access to government information is among the first limitations imposed. It may be uncomfortable to have police records available for public disclosure but the alternative is a system where you or I may simply disappear into a Draconian closed system leaving relatives and colleagues uncertain and afraid. When government can hide what it's doing in any local department or agency we all lose. It becomes unaccountable. We are cut out of the process and the debate and mistrust naturally follows. Fortunately there is momentum to reform our lack of entitled records access. Please support the Kalra Campos Chu memo and the public interest by passing the recommendations of the sunshine task force.

>> Mayor Reed: (saying names).

>> Thank you, mayor and members of the city council . I'd also like to thank members of the Sunshine Reform Task Force for their vigilant effort in thinking through a moderate proposal. Effective policing relies on the trust of the community. Having an overly secretive department hinders that trust unfortunately we have a department which routinely denies community organizations like ours even the most basic request because the current law gives them the discretion to release this information but does not excel them to to. There is specific language to redact, to prevent an unwarranted invasion of privacy, to protect juveniles, victims of hate, violence, talking, reports from sexual assaults are exempt from, states like Louisiana and Ohio, cities like San Diego where when we submit a request we get the reports. Counties, like Santa Clara County, where when we make a request, we get the reports. The city just voted to give the consortium for police leadership in equity 20 years or more of reports for as many charges as they

request. While at the same time, denying members of the community six months for one charge. We urge the city council to support the Kalra Campos Chu memo. A transparent police department is a more trusted one.

>> Mayor Reed: Pastor Jethro Moore. (saying names).

>> Mayor Reed, city council, chief days of, San José Silicon Valley NAACP believes public is a violent imperative that we as a community continue to monitor the actions or inactions of our elected officials regardless of our stance on issues. The sunshine laws are a window into the decision making process and we have a right to participate at each step along the way. We have a responsibility not only to keep up with the current issues of today but also give our support to officials when we feel they are correct and disagree and oppose them when they are wrong. Mayor Chuck Reed and city council I would like to inform each of you that I pray regularly for you and the decision you make whether in agreement or disagreement when I were I supported you in your position but now a few years later with the economy in the tank we need to keep tax money in and not leave. I understand why your position has changed but what I cannot understand is your continual unwillingness given the 647 F exposure of high arrest rates of Latinos and people of color is clearly an issue of trust trust between the citizens of San José, the question we ask in this case what does the city of San José have to hide? If the San José police department is doing work as a legal professional and fair manner then open the books. If there is indeed nothing to hide then vote for the alternative language proposed by Kalra, Campos and Chu. Vote for transparency. Proposed by mayor Reed as opposed by open police records and the Sunshine Reform Task Force. Media community and business leaders who compromise the sunshine task force chosen by the city. Please do not further erode the policing policies and procedures of the San José police department. As the Carter center puts it, range of information enables them to participate more fully in public life helps to determine priorities for public spending, receive equal access to justice and held the public officials accountable, inadequate access to information allows on the interest of the few rather than the many, thank you.

>> Mayor Reed: Sandy Davis, Walter Wilson, Richard Conda.

>> Mayor and city council, my name is Sandy Davis and I'm the director of rape crisis center located here in Downtown San Jose. We're an agency that interfaces with about a,000 new sexual assault victims every year. I have been actively following the work of the task force for over a year and I appreciate any concerns being considered as we have worried about sexual assault victims information being released in a very public domain. But I'm left still with the worry of the unintended consequence of the average victim not understanding what is redacted, what is exempted and what is going to go forward. Already, sex crimes are the most underreported crimes in America. And when sunshine reform we worry that we are going to drive that number to a greater height. And we need to have the faith and support of our victims in coming forward. What we don't want as a community is for there to be an appearance that sex crimes are going down. And I think that we are going to have that impression, because I think numbers will start to drop if we support the sunshine reform. Thank you very much.

>> Mayor Reed: Walter Wilson, Richard Conda, Scott seaman.

>> Good evening, honorable Mayor Reed, councilmembers, staff. My name is Walter Wilson and I'm on the board of directors of the African American community service agency board of directors to encourage you to adopt the moderate recommended language from the Sunshine Reform Task Force regarding access to law enforcement records this issue for me personally is important because my best friend, Brenda Otey, a task force member who passed away almost a year ago to the day was the task force's strongest proponent for open police records. Brenda's last official duty was as a task force member. This letter also is to support Brenda Otey's chuck Reed was refreshing considering San José's recent past of

back room deals and lack of public trust. The new Reed administration commitment to transparency we thought would be the beginning of building a new trust between the African American community and the City of San José. It is unfortunate however and with greatly regret that we find the language from the Rules Committee being proposed today and by your administration to actually undermine the need for transparency within the San José police department and therefore we must oppose its passage. Real transparency leaves no doubt, gray areas or crappy language. Real transparency is crystal clear for all to see. Honorable mayor and councilmembers, please let the sunshine on open records in San José. Thank you.

>> Mayor Reed: Richard con da followed by Scott seaman and Barry Do.

>> Good evening, Mayor Reed and members of the city council city council. I believe we all recall the tragic chuting of Bick Ca tran. And Daniel Pham because called we are afraid to call 911. That's a tragedy also there's a problem of trust here with the San José police department, trust is at a very low point and I think the way that we rebuild trust is that we move towards transparency. So I fully support the memo put forth by councilmembers Kalra, Chu and Campos. I urge you to adopt that memo. If you do not adopt that memo then please do not do anything. The memo is the correct way towards transparency. Thank you. [applause]

>> Mayor Reed: Scott seaman, followed by Barry Do and then Von Le.

>> Good evening, Mayor Reed, members of the city council. I'm a policeman at Montecino representing 335 press chiefs in California and also as a member and past president of the Santa Clara County police chiefs association. Our association both the state and at a local level have provided both verbal testimony and written evidence in support of the efforts here tonight, and what I ask to represent to you is, there are still our organize's positions that the recommendations of the pair and staff are most strongly considered in interest of victims, witnesses and members of the community, and to protect the integrity of investigations and investigative methods. I would call your attention to those excelling examples that illustrate unintended consequences. That is what the police work in the field of and if world of, the possibility of unintended consequences. And I believe the efforts to further broaden the release of information would erode the law enforcement's ability to provide public safety. Thank you.

>> Mayor Reed: Barry Do followed by Von Le and Ross Signorino.

>> Mayor Reed and city councils, I support wholeheartedly the proposal of the Sunshine Reform Task Force tonight. Although I understand that there's some exception as the police department official and District Attorney Doris Carr point out. However in the case of Daniel Pham, the sunshine proposal would help tremendously to everyone involved in the community and the public at large. The Viet community has suffered greatly without the openness involved. The family lost their beloved son. The police department would face the lawsuit and the city would have to use taxpayer money to pay for the victim family if the justice is awarded to the defendant. The sunshine proposal would produce a win win resolution. The public would know the true story, victim family could be at rest for the true reason why their son's lives were taken away and the police department would learn a very good experience on a diversity situation particularly to an ethnic community and a city of course would save the resource and taxpayer money on the lawsuits. I hope that the council would approve the Sunshine Reform Task Force tonight, and now the grand jury had made the final decision already. And I would go along with the mayor Chuck Reed to have the 911 tapes and all of the police report involved in the case to be released for the good of everyone involved.

>> Mayor Reed: Van Le followed by Ross Signorino and forest Williams.

>> Good evening, Mayor Reed, city council members and staff. My name is van Le and I'm here representing the Vietnamese community of and would like to speak about the transparency Sunshine

Reform Task Force. The Vietnamese American community and I believe that the citizens of San José appreciate the effort of the task force members as well as the memorandum signed by the three councilmembers Ash Kalra, Nora Campos and Kansen Chu that recommend additional exemption of the task force. We are in favor of and support their recommendations, specifically we request the release of 911 tape and police report concerning the death of Daniel Pham. That the City of San José immediately implement procedures to ensure that no other incident citizens die as a result of circumstance similar to the Daniel Pham case. That the public be given the full information as to the circumstance of Daniel Pham's death. That the mayor follow through on his promise to meet with the Vietnamese community and police chief Davis concerning discussion of the current 911 procedures, and order such procedure to avoid such tragic death in the future. Because it leads to more secrecy than transparency . Recommendation issued by councilmembers Kalra, Campos and Councilmember Chu. We look forward to working with the city departments to ensure the results are achieved, thank you.

>> Mayor Reed: Ross Signorino, followed by Forrest Williams and Betsy Wolf-graves.

>> Ross Signorino: Thank you, Mr. Mayor and members of council. The first speaker that got up and spoke, then the police department will be trusted. Those were his last words. The Chief of Police just mentioned here, about the sunshine task force, they have the best of intention. Hell is paved with good intention, unfortunately that's the way life is. But Mr. Mayor, you and the rest of you politicians when you run for office, be careful what you say. Complain what you say. Because when -- explain what you say. Because when you get in office you see the office a lot different than you were out of it, before. You claim about sunshine. What did you mean by sunshine? That we have to reveal all the cases that are going on in the police department? We have to reveal possible victims' names, witnesses, so on? That is not sunshine. That's jeopardizing people. The same thing with the investigation with this grocery man that was killed here at bank of the West in the parking lot, it was robbed and killed there, it took months before that case was solved which was a good thing the way our police department works.

Everything was quiet, finally, they brought the person who's potential, well, in any case, nonetheless, this is, you cannot jeopardize cases just by saying, well, we're going to reveal everything. What are you going to reveal? Why is there such a need to know? If our police department is acting in an irregular way we have departments to look into this. But just to say blanketly just go ahead and reveal everything, then I say no. The police department have to work the way they are right now, and it's the right way to work. Otherwise we'll jeopardize the whole city.

>> Mayor Reed: Sorry your time is up. Forrest Williams, Betsy Wolf-graves followed by Raj Jaidev.

>> Thank you, Mayor Reed and councilmembers, thank you for the opportunity to share with you my views. My concern is basically for the safety, security and the protection of rights and privacy of women and children. Oftentimes we propose laws, rules, code changes, that, when we do them, they are great ideas, but the results of them don't necessarily come to the conclusion that we wish. The victims should be involved in any information that is to be released about a crime. So any process -- I'm recommending that any process will include the victim, in terms of whether the information or whether they agree that the information be released or not. Redacted information, as we know, even with the security that we have today, our credit cards, our bank accounts, all of these are protected. But they can be invaded at any time. So redacting a report does not guarantee any kind of security. The last thing that I would recommend is that we find out what the problem is. Changing the records, or allowing more record, is not going to solve the problem that we have in terms of trust between the community and the police department. We must find out what that is and attack that problem. So if redacting the information or providing more information is going to resolve the problem, I'm not sure that it will. So I think we should take a look at the issues, do more work, in terms of working with the community, and those involved in the

system, to come up with a better solution, in terms of what the problem is. This is not the solution for the problem of the solution to the community.

>> Mayor Reed: Betsy Wolf-Graves, Raj Jaidev, Tony Alexander.

>> Okay, can you hear me? Betsy Wolf-Graves. Honorable mayor, city council members, I'm a member of the ACLU board and also Debug, a community action group and I observed the public records task force that worked hard for three years to try to present a good, working operation to the community. They wanted to protect groups such as victims of sexual assault and abuse and juveniles. But this protection evidently was not good enough for the police, for the D.A.'s office, and so we learned, for the mayor. So what are we left with? A concerned Vietnamese community among supporters of the First Amendment, pained at the secrecy around the 911 tapes in the death of Daniel Pham, and the rush to a closed grand jury. In the end, the picture of Daniel Pham's grieving father sitting in front of the grand jury doors, shutting him out, leaving us wondering, who will call the shots, in balancing the public's right to know. I can guess, if the mayor's staff report is accepted, that is not going to be acceptable. So I am urging you to accept the report of the legitimate public records task force, and honor the memo from the council persons Kalra, Campos and Chu. And when we talk about unintended consequences, one of the unintended consequences --

>> Mayor Reed: Sorry your time is up.

>> Of adopting this is cutting out a huge section of the community.

>> Mayor Reed: Our next speaker is Raj Jaidev.

>> Hello I'm with Silicon Valley Debug and as group that has members that have been both accused of a crime and those that are victim of a crime I want to say we are not walking into this conversation lightly, having reviewed all proposals we are wholeheartedly endorsing the set of proposals by the Sunshine Reform Task Force. This evening is not about abstract hypothetical reports, this is about Daniel Pham and the family and the community that have been left in the wake of his death and the secrecy involved in it. We have been here before out front and will be here again demanding justice and accountability and change. But tonight we are here based on the value that predicates all of those hopes and that is the value of truth. And no proposal, and no elected official has the right, the moral right, to deny a grieving family to know the truth around the circumstances of their fallen son. Now, we all want to move forward as a city, out of this tragedy. I know the chief does, I know the attorney does, you all do, the community does. But politically we can't even problem-solve to ensure that such tragic deaths don't happen again until we know the truth. All we are left with is being frozen in the emotions we have, not being able to properly grieve and left as a city unable to problem solve. And you know it's bad when community leaders are asking elected officials to do nothing. So I'm hoping that you do the right thing politically and morally and allow us as a city to open up trust and make a conversation and make it so that Daniel Pham's family can mourn and grieve and we can honor his memory, thank you.

>> Mayor Reed: Tony Alexander, followed by Michael Chase and George Beatty.

>> I'm just here to let you know that I support the memo by councilmembers Kalra, Chu and Campos. But I also want to talk a little bit about what I call the pendulum swinging back. I've been a resident here in San José all my life and I remember back in the '70s and the '80s when the NAACP had to come out, because the police department, there wasn't trust here in the police department. In the '80s we had to go through project diversity to make sure we diversified. There was a better connection between the police department and the community because the police department decided that they had to open up. One example and my friend Walter Wilson brought up Brenda Otey. When I was part of the san José actually monitored the curfews by going there and actually sitting in and seeing what's going on because we set up a partnership with the police department because there was an open policy. Right now there isn't an

open policy. We don't feel comfortable with what's going on with the police department. We want to make sure there's a comfort level some we don't have to have people come out and talk about sunshine reform. It's about us working together and making sure we have openness. So again, what it's about is making sure that we all are able to go ahead and work together and making sure that the pendulum comes back in the middle because right now it's swinging the other way. There's no trust. But it's up to you to make sure we have that trust back and also the police department. We need to have the trust come back, right now it's not happening and it's up to you to make sure that happens. Thank you.

>> Mayor Reed: Michael Chase, followed by George Beatty and.

>> I didn't come here, the elephant in the room is police conduct, my standard Silicon Valley middle manager in a electronics company is that there is a clear perception from the community that failing to implement the Sunshine Reform Task Force task force proposals will be consistent with covering up police misconduct. It looks like the primary opponents at least initially were the police. San José I'm aware just from going on the Internet has a growing national reputation as a city that countenances police misconduct. And that's an issue. I think it affects the reputation of the City of San José. I think the concerns about privacy and victims rights are not without merit but they are simply a smoke screen. And the real issues are about community mistrust. I would urge all of you to try get an idea of what the nation thinks of San José. Thank you.

>> Mayor Reed: George Beatty followed by Aaron Recendes and Sam Ho.

>> Good evening, pair, councilmembers. Vice president, San José Police Officers Association. I'll be brief. We heard from our District Attorney, Dolores Carr, our Chief of Police, we have heard from two attorneys offices that we need to keep the information consistent with the California public records act. I'm a cop of 26 years. Presenting evidence before you tonight, Chief Davis and D.A. Dolores Carr. We are the experts in the field and we're telling you if you are releasing more information than is necessary that's a bad idea. And it is a bad idea because there are unintended consequences that we know about it will victims will be revictimized and innocent people, whether they're alleged suspects, witnesses or second victims could be killed. That's a fact of life. Happens every day throughout the country. I'm here to say that I would hope that you would keep the release of information stuff, records consistent with the California public records act. Reason being I know our offices, are men and women -- I've heard the word accountability thrown around, aren't going to feel or be health responsible whenever a reaction is missed or whatever the case may be. I just leave you with this question: Do you want to be held accountable? Thank you.

>> Mayor Reed: Aaron Revendez, (saying names).

>> Good evening Mayor Reed and all councilmembers. I hear what the different was saying. She was right, and also Chief Davis. But in this case, we got a Vietnamese family asking for open those records to the grand jury and to the media. And I think you guys should do what the family is asking to you do. And also, you know, I know that certain loss that not to do, what not to make. But you have to make a discretion and especially on this, open out these records, you know, we're not talking about open all the reports when special circumstances where in last I support the memo that Councilmember Campos, Kalra and Chu made. And you just do your best and I think we have to have sunshine and openness. No secrecy. You know, if there's nothing to hide then open it. Thank you. [applause]

>> Mayor Reed: Sam Ho, followed by David parker and Carey Hamilton.

>> Good evening. Thank you for the opportunity to be here. I'm here to ask that you would take the leadership, because we still trust in your leadership and listening to these issues and making the right decision. And would support the proposal brought fort by the three councilmembers, Campos, Chu and Kalra. As we know trust come through transparency. And an occasion that just happened with Daniel

Pham relating to 911 tape is a public event. But it got completely kept away from people and that kind of secrecy does foster its mistress and over and over again we lose the trust of the people of the city and that's the most important component that we need from our city leadership. And we're asking that you help restore trust through transparency. Many people in the community now afraid with the fact that if they call 911, they don't end up with a rescue but they will end one a death. We have witnessed that over and over again. Let's look into how we can ensure that people can trust our 911 system, and our process because transparency will foster more trust, I implore you to follow the Sunshine Reform Task Force recommendations. It is time you adopt what they recommended. They have done their homework and we ask you to support the Sunshine Reform Task Force recommendations. Thank you.

>> Mayor Reed: David parker, (saying names).

>> Good evening, Mr. Mayor, my name is David parker, my comments are only personal. I don't think one person in this room is antilaw enforcement or antivictim's right. I would like to thank three years ago, you campaigned for your current position, on a platform of often government. But does anyone else here find it ironic that you are minimizing the hard work of the task force you worked so hard to create. Last week, this Public Safety committee, chaired by Councilmember Nguyen. You must meet your constituents half-way. There must be continued hard work on this issue. And a good-faith compromise. I ask I to support the memo by Councilmember Kalra, Chu and Campos. Thank you very much.

>> Mayor Reed: Carey Hamilton, followed by Ed Rast and I think I have another card.

>> Thank you honorable Mayor Reed and members of this council I am no way an expert, but what I hear tonight gives me great pause. I think everyone in the room knows that the Pham case was a tragedy, always around. But whether the proposals in the room, I really don't know and I have greatly pause about them. I've been on the side of a victim. I've been wins to crimes. I've been in the middle of a violent gang situation, been dealing with the by and large mostly good experiences and had my issues resolved. And I believe a lot of good questions were raised tonight and a lot of what I heard from Dolores Carr raised questions in my mind and I hope that those questions, constitutionality and other issues would be addressed. I would be afraid in terms of redactions if that would -- if a large volume of information is being put out there, if everything that should be redacted would be redacted? What are the legal consequences and what are the consequences in terms of people's lives. I had a parent that was illegally arrested, and it was at a time when you don't have to change, his career path and his opportunities in life. And so I that I what someone is accused of being presented in various ways. Especially in current technology, very seriously. I have lots of questions that I hope will be thoroughly answered before you make such an important decision. Thank you.

>> Mayor Reed: Ed Rast, and (saying names). Ed was the former chair of the Sunshine Reform Task Force and I'm glad you could make it.

>> Ed Rast: Thank you, the excellent and difficult work they do to maintain our community's public safety. Good and reasonable people can disagree on what is in the public good versus what is a public or individual harm. The city needs the community and neighborhood support for community policing which depends on the eyes and ears of the community to report crime to our understaffed police department and to supplement -- and to support the idea of increasing police staffing funding and a new public system to include the issue of does the community have trust in and believe that we have -- are well served by our police department. And the answer is we believe yes. But at the same time, we also believe that we had an application to get some additional information on the activities of the police department, not so much to basically some people would like to do, accuse them or otherwise basically try to prove them wrong. That's not what we believed in. We believed they were doing a good job. But we wanted to get additional information, statistical information and otherwise. I think the memo that came from

councilmembers Kalra, Chu and Campos go a considerable distance in getting the compromises that are necessary to implement a good recommendation. And most of the task force's recommendations after the Rules and Open Government and the city staff worked back and forth on some, we were willing to come back and this particular one because it's been quite contentious, we weren't able to do that. I think in a rational way we can really sit back and take a look and I think the councilmembers, you know, the three councilmembers have a step in that right direction to try to get us to something that gets to the goals. And the real goals you're looking at is the trust we have in our police department and getting the information to the people and I think in the discussion that follows we should basically break down and see, does what -- does the council agree, what are the goals that we're trying to accomplish and if it's a funding issue then we need to talk about the idea that we support the goals and when the funding is resolved we'll then implement it. If it's not a funding issue if you disagree therefore with the goals then that needs to be clearly stated so the community can continue to work on this issue and resolve it eventually as the time goes on. Again I thank the work of the task force, the staff, the Rules and Open Government committee as well as everybody else involved in this process because I think the community wisdom and process that's gone into this process is eventually going to end with a good result, be supported by the police department and as well as the other areas in the community thank you very much.

>> Mayor Reed: Cherise Domingo is the last speaker.

>> Good evening, I'm Cherise Domingo. I'm with Silicon Valley Debug. I've read police reports and they're some of the most interesting formation of creative writing that I've ever seen but it's become more and more real to me when I've seen my friend Noreen Salinas try figure out for the last two years how her father Steve Salinas was killed by San José PD. I've seen her read through medical reports trying figure out how her father got killed and I can't imagine what kind of emotion and pain the Daniel Pham family is going through just to figure out how their son died. And the image of Daniel's father sitting outside the grand jury courtroom, as his closest position to the truth at this moment, is completely sad to me. It's telling that we have to -- that we're in this point in society where we have to talk about transparency. By not opening police reports to the public we contribute to creating another class of haves and have nots here in San José. Those with information and those who have not, who do not have that information. So I ask you to honor the memory of Daniel Pham, of Steve Salinas, and let these families grieve properly by opening these police records. Thank you. [applause]

>> Mayor Reed: All right, I have a couple more cards. If you want to speak get your cards in you have one minute to get them in. Aaron James and Dan Pham.

>> Aaron James, Silicon Valley Debug. The Pham family needs to know whether this was a justified or a coldblooded killing. The Pham family, were good enough to walk me to the scene and walk me through what they know about this. What I can tell you is the configuration of the backyard, with barbed wire, inside the fence, behind which Mr. Pham was shot at and apparently in tasers, the public is entitled to know and I would think that you all would want to know. I'm going to draw your attention to a case, Richmond newspapers versus Virginia, 1980 U.S. Supreme Court case. It was in the posture, I'll grant you, of a criminal trial rather than a grand jury. However, the concepts in that case apply equally here. I'm just going to read briefly from that. When a shocking crime occurs, a community reaction of outrage and public protest often follows. Thereafter, the open process of justice serves an important prophylactic purpose providing an outlet for community concerns, hostility and emotions. Without an awareness that society's responses to criminal conduct are underway, natural human reactions of outrage and protest are frustrated and may manifest themselves in some sort of self help. That's not me, that's what they did in vigilante communities on the frontier. The accusation --

>> Mayor Reed: Your time is up.

>> Please open grand jury now, thank you.

>> Mayor Reed: Vin Pham. Mr. Pham is our last speaker.

>> Mayor Reed, city council, I just translate Vin Pham's piece. [Vietnamese]

>> Mayor Reed, ladies and gentlemen, the city council, my name is Vin Pham. I'm the father of Daniel Pham who was the victim of a police shooting on May 10, 2009. Since the date of my son's killing my family has been in a state of emotional turmoil, a condition which has been only increased due to the lack of information provided to us about the shooting of my son. I don't know how many times my son was shot. I only learned the name of the officers who actually killed my son through the Mercury News. To date, my family has been repeatedly denied in our request to uncover the truth. In the past the city attorney's office has always hidden behind a column need for secrecy regarding grand jury proceeding has been completed and still the public has not been provided with the necessary information. For us, the member of Daniel Pham family and for the people who are asked to entrust or safety to the members of the San José police force every day our questions remain. May 10, 2009 had the fourth time son's illness each time we inform the police of my son's illness the first three times they were able to successfully to get him to the hospital to get him to help his condition require. Why did the police who arrived on May 10 not know of this prior visit and their successful and peaceful outcome? How did the officers who respond to this type of call assistance be informed prior to arriving on the scene? On May 10 when the police arrive at my house my youngest son Brian was standing out front and immediately tell the police about my son's mental illness and paid no attention and drew the firearms and shot my son. My son was safely separated from the world in the backyard of my house, why did the police jump the fence and force a confrontation rather than trying to approach in a safer manner that would not startle someone known to be dealing with a mental illness. Why did police leave themselves no avenue of relief, why is the city trying to keep all the facts surrounding my son's shooting secret? Why did that certain? Certainly not for the public's benefit, it does not make us safer. The only reason I can see is that the city is keeping all of these facts secret in order to protect itself and the killers of my son. So far, the city attorney's office has only acted to protect itself and the police. I ask you, the leaders of our city, to do what's right, and act to protect us, the City of San José. Thank you. [applause]

>> Mayor Reed: Thank you. We have one more speaker. We have one more speaker, our last, last speaker.

>> Thank you, mayor and councilmembers. And especially for opening this time to a person who is not a resident of San José. My name is Abdi sultani, I'm the executive director of the ACLU of Northern California. Since 1934, the ACLU has worked on police practice matters throughout this region and I want to offer you three brief points. Other cities and jurisdictions have ordinances beyond the public records act, similar to what's been proposed by this task force. Second, other cities and jurisdictions, under the existing public records act, are for more responsive, for more open, than what we see from the San José police department. And third, I really want to emphasize the importance that summary reports are not adequate. When there are patterns of police practice issues, the underlying reports are necessary for the public and community organizations to identify those patterns, and to help identify solutions. We thank you for your attention to this matter. And really want to emphasize the importance of the proposal that's in front of you and urge your report.

>> Mayor Reed: That ends public testimony and want to bring it back for council discussion. As chair of the Rules and Open Government committee, I have a few comments to make. We've spent a lot of time over the last couple of years, at least 35 times including four special study sessions the city council has adopted over 90% of the Sunshine Reform Task Force recommendations from phase 1 and more than two-thirds of the recommendations from phase 2. The issues we have tonight have been probably the

most difficult of all of the recommendations from the task force which is why we're taking them up last and why we spent so much time on it. The Rules and Open Government Committee has spent many hours on this single topic that's in front of the council tonight. We considered several alternatives to the task force recommendations. After we first concluded that the Sunshine Reform Task Force recommendations were not something that the committee could support, I'd say at least speaking for myself, that was primary because law enforcement officials in organizations throughout the state as well as local victim rights organizations have said it was a bad idea. It's a bad idea to release all of the extra records in a way that was proposed by the Sunshine Reform Task Force. We have received a lot of letters on this. We circulated the task force recommendations far and wide. And in front of you is a list of the organizations, law enforcement and victims rights organizations who came out and said it's a bad idea for a variety of different reasons that nevertheless it's a bad idea, most of those were reacting to the early days of the task force's recommendations when we first circulated them. Today we added to the list the peace officers research association of California, PORAC, which represents 60,000 peace officers around the state so we've added their name there. I'd like to just read a couple of quotes from these organizations from their letters on why they opposed the task force recommendations. The California narcotics officers association, by John Avila, president, he says, much of our work involves the use of undercover officers and the inadvertent disclosure more than a chilling effect. It can result in their death. It was clear, in his words, that the task force recommendations were developed by persons with little firsthand knowledge of police procedures and the risks associated with much of police work. That gave us some pause. As did what the California peace officers association said, Sam Spiegel wrote, an overbroad reporting requirement as contemplated by this proposal will have a chilling effect on citizen participation and will cause a decline in citizen confidence in law enforcement's ability to protect them. Ironically this proposal will also punish those who may have initially been suspected of a crime, disclosure of their name would be the kind of community's scarlet letters that will be chased by landlords, employers and will unfairly disadvantage them. There are also unintended consequences, other people have mentioned unintended consequences tonight. Overhead is a slide from the Tampa Bay Area, St. Petersburg Times. Many people have often cited as a leader in open records and one that we should emulate. I have a problem with emulating Florida if this is going to be the result. These are people who were booked in the last 24 hours. Booked. They were arrested, they were booked. They have not been charged. They have not been prosecuted. They have not been convicted. We have another slide here from another place in Florida. This was a little private enterprise, cell mates magazine where entrepreneurs are selling mug shots and booking information price weekly \$1. Another slide from again, Florida, palm are Palm Beach, their mug shots page, one of them was an example of an arrest for public intoxication, not a conviction. Atlanta, driving without a license. All these people on these Websites and these magazines have not been convicted of a crime. They've been arrested but not necessarily charged. This is precisely essential concern that we were dealing with public intoxication arrests. We were concerned that we were criminalizing people that were young and stupid, they got arrested, not necessarily convicted but nonetheless they got this record. Another slide from Texas. This is from twitter. This looks like it's a denton police department twitter page, it is not but it is a great example of how technology can be used to disseminate information. This sends out a tweet with a mugshot link every time someone is booked. It's not by the police department, it's by a student at the University of North Texas. All of these Websites worry me. The unintended consequences are real and have potentially dreadful effects on people's lives. I think the District Attorney said there were 17,000 people of cases that they review in the District Attorney's office that are not charged even after the departments somewhere given them to the different, and there are many more that are arrested that don't make it to that point. We have 34,000 arrests in San

José every year. I do not want the mug shots of 34,000 people posted on the Web for anybody who wants to do a little research to find out if they've been arrested before they make hiring decisions or before they make renting decisions. I don't think anybody deserves having their mugshot just because they're arrested. I certainly don't think that people should be prevented from getting a job because they have been arrested. You have to do a Web search, why bother to ask the person in the interview, you can prescreen candidates. We already know that employers look at Facebook and Twitter sites to see if people have posted photos of themselves doing stupid or illegal things. The difference with those sites is that people put the information on there voluntarily. This is not voluntary. Here's another slide, Youtube, you've all heard of that. In the old days, a release of a 911 tape they might have gotten shown on the 6:00 news or the 11:00 news. Nowadays it lives forever on Youtube. If I was the family member in the case here the last thing I'd want for this 911 call to be on the Internet for eternity. There's a quote on here from somebody, a child describing a killing scene to a 911 dispatcher. This is a child. I don't know who it was but they killed everybody here except for my sister, my brother and me. I do not want children subjected to that. If you follow the procedures in the proposal, of the Rules and Open Government Committee has put into place, media and other interested parties can request the release of a 911 tape but we give victims, family members and other parties to the case the chance to weigh in. If the police department denies the release of the tapes, the appeal goes to the Rules and Open Government Committee for hearing. People can voice their concerns or not, voice their concerns and a decision to be made will be made whether or not to release it will be made in a public hearing. The Sunshine Reform Task Force proposal would take away this process and take away the possibility that victims and their families 911 tapes not be released. People will not call 911 because they'll know that will be posted on the Web. Another from "Time" Magazine, this article from "Time" Magazine talks about Florida and you have seen some of the slides. As a matter of fact, a lot of people think Websites are abusing. There's a highlight on here, that's a quote from a couple of people who are ethics experts saying this usage serves no journalistic purpose and amounts to a cyberversion of the Salem witch trials. I don't want everybody in the City of San José who has been arrested to show up on a Website. To summarize the concerns voiced by law enforcement and victims rights organizations that gave the Rules and Open Government committee a lot of concern over the Sunshine Reform Task Force recommendations The task force recommendations were overreaching and did much more harm than good. These are concerns voiced by law enforcement agencies Encourage skeptical victims and witnesses to come forward to the police. the public should expect to feel safe when working with the police, the amount of disclosure could jeopardize ongoing police investigations as well as the successful prosecution of criminals. Even though, identities of witness and victims given these concerns the Rules and Open Government Committee asked staff to come back with clarification with an overall approach that would ensure that the public records act we have the police department, the different and the Sunshine Reform Task Force representing, hammer had out, the factual circumstance guidelines that Rules and Open Government committee has endorsed which was the staff registers will clarify ambiguity in the California public records act, provide greater disclosure without harming Public Safety and in bringing toward this recommendation the committee carefully balanced talkers coming down to our police department to look at the records to see if they can get information about identities and locations of complaint ants witnesses and undercover police officers. So I'm urging my colleagues to support the registers from the Rules and Open Government Committee because in this instance the public's interest in more information which is real and valid is outweighed by the public's interest in privacy and safety. I just actually think one short metaphor. We're being asked to sail into uncharted waters. There is no other city in the state that has this kind of rule. When you are being asked to sail into uncharted waters, it is wise to take counsel from people who

have sailing experience. If you are one of the people that think this is not something that we should be concerned about and the people that say don't do it it's a bad idea, law enforcement organizations all wind up on one side. So I have to take the counsel of our law enforcement organizations and our victims rights organizations, and in this case we have to balance that on the side of Public Safety and I think in this area we have to come down on the side of public safety. I had a few questions for the chief and that is a few references I need to clarify. That is, San Francisco and Santa Clara County, that they somehow have a police that allows people to get access to police records. Are you familiar with that?

>> Rob Davis: Some had received some reports from San Diego I don't know the variables involved or decision. There is probably nobody in this room who knows Bill Lansdowne more than I do. They receive a request for a public record due to the public records act request and they submit it to their staff that oversee this thing as well as submits it to the City Attorney, and there's a City Attorney that works on them right out of his office. They look at them on a case-by-case basis and they decide what to they can release and cannot release, I've spoken to Bill Lansdowne personally and he is not supportive of the Sunshine Reform Task Force proposal. Can you go to any city in the state of California and produce some type of reports but without knowing all the details or the variables surrounding why those are releasable you really cannot control those.

>> Mayor Reed: How about Santa Clara County?

>> Rob Davis: We are doing basically the same thing. Bee make sure we are releasing what we can be releasing, and as we've stated, we've even gone to the extent of releasing more than that is required, time after time we voluntarily put information out there that others aren't even providing.

>> Mayor Reed: Chief are mug shots part of the file?

>> Rob Davis: Yes, we take them at our preprocessing center .

>> Mayor Reed: Rick, did you have a comment?

>> City Attorney Doyle: Mr. Mayor, preemption issue, we've addressed this before at the Sunshine Reform Task Force as well as the rules committee but the entire council needs to be the same information. The Rules Committee -- excuse me the sunshine task force about two years ago received a position paper from the D.A. which essentially is what the District Attorney stated tonight, that this resolution is unconstitutional. Take a look at that and come back with our recommendation, at least our own opinion. Our review of the public records act is we are not preempted, there is no case law, no statute that pre-empts that. The state law sets forth specifically minimum standards and the legislature has said that local agencies can adopt greater standards. So that is what the task force looked at. That is what the proposal is, that's what the Rules Committee looked at. That's what the proposal is. There's some suggestion that the attorney general has come to the same conclusion but I'll point in the packet to two letters received from the attorney general, one October 8th, 2008, which has been referenced frequently in this discussion which essentially agrees with the police from a policy standpoint that we should follow the public records act. And some recent communication with Tom Manheim, where it specifically says it is the Department of Justice appropriate local resources to utilize her resolution of such matters and they opt to give no opinion on this issue. So the bottom line is that we wouldn't be here tonight if we believed you were preempted, and so this is why we were having this discussion.

>> Mayor Reed: It would have been a much shorter discussion if we were preempted. Vice Mayor Chirco.

>> Councilmember Chirco: I want to thank everybody who's come out tonight. I look across the chambers and I see representatives of the Sunshine Reform Task Force, Bert, Ed Rast a long time community activist and Bob Brownstein, who is not here tonight but who is very active in the sunshine task force. I see the representatives from the NAACP, Debug, I see leaders in the Vietnamese

community, the ACLU, and I want to thank all of them. It is through this kind of a public process, regular discussion, intense debate, that we get the kind of government we get. The decisions may or may not go the way you want. But it's through this discussion and this open forum that your government has to explain and justify what they do and why they do it. I have been on the Rules Committee and participated in the hours and hours and days and days of listening to testimony. And the tragedies that have happened have pulled my heart strings just as they have pulled at the communities. But all that being said and done, I have to agree with the staff. We must protect those that are most vulnerable. And while that may not seem to be best served by making a motion to problem of the rules and open government committee, amended the police department statistical reports and fire department statistical reports, I have to say that I believe it is. I felt when we were doing the sunshine task force and the city records were being discussed that the city had an obligation to prove in was a reason for not disclosing those documents. But when we got to the Public Safety records, I began to feel it was opposite. That there needed to be a compelling reason to allow for public records disclosure of something that was to exceed the public record documents as outlined by the State of California. What I have seen appears to be a community distrust. And I would like to challenge the police to have one-to-one with our community. Because the power is in the relationship. And if you can sit down and talk to somebody about your problems, your concerns, your anxieties, whether you're the police officer talking or whether you're the community member talking, you begin to build a relationship and I think that's what needs to be done. And as I look across this room and I is a exactly the right people to begin that conversation. And I deeply thank you for coming to the county, giving us the rigorous debate, holding us accountable and making us defend what we govern by. I prefer to leave Solomon-like decisions to Solomon. But Solomon's not here right now. Only the council of is. I have been an advocate and I have sat on if governing board. There are roles and responsibilities that come with each position. And I salute each and every one of you for being the advocate that you are. I have been that advocate. But in my role as a governance board member, I have to look at more than just what afternoon advocate can do. Actually sometimes I miss my advocacy position because all I had to do was advocate. I didn't have to plain, pay for, try and understand somebody else's position. But as a governing board member, I must. So I would hope that I can get a second on this motion.

>> Councilmember Pyle: Second.

>> Councilmember Chirco: And again, thank the community for the work you do. And we will look to you to continue doing.

>> Mayor Reed: I have a question from the maker of the motion. There was a request from the District Attorney, when she was speaking, that we add the word "others", I wonder if you are incorporating that into the motion or not?

>> Councilmember Chirco: If I could understand the direction, what does that add to it?

>> City Attorney Doyle: I think the suggestion just now is related to the property rights of victims. This could expressly include anybody who has a public reason.

>> Councilmember Chirco: I would include that as well.

>> Mayor Reed: You make a motion for inclusion. Councilmember Constant.

>> Councilmember Constant: They along with I and Councilmember Pyle spent long hours working on this at the Rules and Open Government committee. And listening and weighing all the different competing interests in this. In addition to that discussion, as many of you know, I was a police officer for a number of years so I was able to draw on some of my own experiences, as an officer who wrote thousands of reports over a 14-year period, who wrote reports that would have been affected by an ordinance like this. And as a detective who followed up, investigated and worked with victims, and witnesses in

investigating cases. I believe that the worries and the fears that have been expressed by people tonight in those areas are real. They are true, they are things that we have to take into account. It is so easy to draw inferences from a police report, even if the names are redacted. Sometimes, oftentimes, relationships are described, so-and-so's brother, so-and-so's cousin, my friend's wife's brother, that even without the name you can easily chart out and figure out who's being talked about. The you one police report that the chief showed that gave some examples of something that wouldn't be redacted that can read to identification, those are real things, they can happen. There are different things, that contain police reports. If your home is burglarized, even if the suspect is never really caught? Do you really want any member of the public to be able to pull that report? No, not only do you have X thousands of dollars worth of heirloom jewelry that wasn't feign, why was is it anybody apples business that you have a wall safe that contains whatever it may contain. There are facts in police reports that would be readily accessible to anybody, even if this had no party tote action. We want to make sure that whether they're calling 911 for immediate help or they're calling to report a burglary that happened three months ago or anything in between that they can have if confidence or they can tell the police officer everything, they can tell the dispatcherrer the same thing, give people the tools they need to be, if people fear what they say are going to have repercussions they're not going to tell us, trust the police department. One of the things that the mayor didn't point out when he was showing his screen shots is that video that was on Youtube because of the young child's 911 call, it was viewed 159,500 and something times. Think about that. 159,000 people watched that gruesome video. And then if you looked at the left side, did anyone notice how many other 911 tapes were there? I think in the age of the electronics that were here with people Facebooking and Youtube-ing, that are going or the discovered tomorrow or yet, do things that are going to compromise our different's prosecution of cases. It is irresponsible for us to do anything that would compromise the safety of one victim. I could not vote for any proposal tonight that would have even the slightest possibility that a victim of a crime could be identified and could be revictimized again. Whether it's revictimized on the Internet or revictimized too. We have received the PORAC, on and often and on of people whose job it is, whose professional is to keep the family save. They're tell us, this is what we have to do to keep the public safe. Maybe making the public safe is not going to make a nice gory Youtube video, I don't carry about that. My personal priority is the health and safety and welfare of our residents, and the people that our police department serves. I think it's very, very important that we take this seriously, that we really think about what we're doing to our residents, to our victims, to the children in our society, and to the law enforcement professionals both in our department, in our brother and sister departments around United States, in or prosecutorial divisions that is what is important to me and the residents in my district and I implore the council to join the Vice Mayor and I in this motion supporting the mayor's memorandum. Thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I first want to start by extending my condolences to Mr. Pham and his family. I don't think anyone who is here will not feel for him, I'm sure my colleagues and I agree that we feel sad for him, it's a tragedy, we hope they can move on as well as anyone could expect in that type of situation. I also want to thank my colleagues who have spoken yet at this point, and want to add some of my thoughts to this. And I did submit a memo and I want to thank councilmembers Campos and Chu in joining me in signing the memo. And I want to discuss some of the concerns that have been raised and what some of the details are of actually what the task force is recommending. As was indicated early on, there are very -- there are exemptions that really you can drive a bus through, on some of the exemptions that would require redacting. Or even complete exemption from being released to anybody. We talk about trust between the city and the community and I think it's so critically important

to have that trust. However, I would not put forth a policy, and I know my colleagues who have signed on with me would not have signed on to a policy that would endanger the community. That's really how this has been coined as the fear card has really been trumped up. Now, obviously we want to protect the victims, and I think the task force recommendations reflect that. Of course, some of the concerns that were raised are concerns that are difficult to reconcile under any circumstance. The reality is, it's very difficult, I know that the representative from the rape crisis center and I certainly commend her and everyone else for the work at the center, indicated that it may cause fear for people coming forward. The reality is, and along with Councilmember Constant and Liccardo, I worked in criminal justice for over a decade. And the reality is that the greatest fear a victim would have certainly in coming forward is facing the accuser. And we know that by law, the accuser, the defendant, has a right to that police report. And I commend all those that work in the social service industry and victims' rights group who help and encourage particularly the women and particularly the young women and the children to courageously come forward and testify against the perpetrators. That is no way affected by anything that's happening here today because those police reports are completely exempted. And I think the greater concern that a victim is going to have is the fact that their defendant doesn't have access to that police report, rather than the fact that it's completely exempted from being released to the public. That one could be easily explained to them. But ultimately what it comes down to is sunshine and the arguments of safety I think have been reconciled, and by the work of the task force. Furthermore, I appreciate the comments of the police chief and the different. In the example given by the police chief referring to the narrative, you know there certainly can be situations in which in the narrative there may be information that needs to be redacted. I have redacted thousands much police reports in my previous police career and obviously some is in the narrative. I included the lengthy portion of the exemption because they weren't listed in the staff report of the Rules and Open Government report but they include the very general -- the very general exemption for information that's necessary to protect the safety of any person, to ensure the successful completion of the investigation or related investigations, prevent an unwarranted invasion of personal privacy and as one of the concerns that were raised, all of the anecdotes that have been raised would be protected under those exemptions and the exemptions don't speak specifically just to biographical data. There is no reason why those exemptions couldn't be applied to the narrative. Oftentimes there is requirement to redact items from the narrative that would disclose information that isn't proper. Now, the other -- the example also that the police chief showed that one police report, in that case, the victim would have a copy of that police report and so they would be able to see it pretty much unredacted with the exception of some limited information. Now, there is also a letter that was referred to from the mayor, from one of the police agency, I apologize, I'm not recalling specifically which one, it revealed the release of information from undercover officers or the disclosure of witnesses' names. In both those cases, those are both fall under situations in which there can be wide redaction that would be -- that would be allowable, under the rules that have been put forth by the task force. And when it comes to summaries, I also share some of the concerns with summaries because it will be summaries again that could leave out critical information, summaries, police reports already by themselves are not what happens, they're a blow by blow summary from oftentimes the police perspective or a statement made to the police. But the policeman has to give his or her discretion as to what is contained in the police report. Even with the Sunshine Reform Task Force, the given the fact that the exemptions are so broad. They really still will be able to ensure the safety of people as indicated, no crimes involving sexual assault would be released, and domestic violence reports, they the I really want to thank the task force members, they have put in a tremendous amount of time into this evident and I also want to comment the Rules and Open Government committee, they have also put in a tremendous

amount of effort. Ultimately some of the concerns that are not, redaction certainly can be resource intensive, some of the items that are included as the some of the reasons for expulsion, you're going to have to have an eye for a police report to do it properly. So that, cost was a concern certainly to me. I know it was in putting together the memorandum, that's one of the reasons in talking about the release of data, the task force had recommended quarterly release of data to be implemented, enacted with this policy. Instead I proposed a reduction in the frequency of the release of the data regarding force arrests and stops to semiannually, rather than have that done if this policy is accepted, to have that done immediately, to have that staff implement the new procedure. We first have to decide what the right thing to do is and then we can find out what the best way to fund it and find the resources for it are. Similarly, item 2 in the recommendations deals with the San José fire department data and then that one I did agree with the Rules and Open Government Committee that that can be referred back to the public safety, finance, strategic support committee, particularly because the fire department is in the process of implementing a record management system. In regards to the cost of releasing reports, that is not something that is lost on me or my colleagues that signed onto the memo. I know for a fact that with Councilmember Liccardo for a few days, that's an issue that is of concern to him as well. I certainly had concerns still do have concerns regarding the cost to implement this procedure, for a large request we know there are a lot of legitimate reasons why someone would want a large number of reports. It could be a professor for research, it could be some of the organizations that spoke today, ACLU, NAACP, San José Mercury News. However that costs money and I can certainly understand the concerns behind doing that. In speaking with Councilmember Liccardo, we were able to come together and at least come to agreement as to ways we would start the issue of how should we deal with that. Ultimately it comes down to trust as has been stated so many times and the San José police department, I've said it many times, the men and women do a tremendous job in protecting our community and I think the bulk of the community feels comfortable, safe in calling the police department but the fact of the matter is there isn't. We need to take steps rebuilding the community as well as it doesn't, do, but I commend the mayor for starting the task force for trying to shed some sunshine on the areas of our Government open to our community. I think this is one more step in the direction of sunshine and so I would like to offer the substitute motion with the anticipation that Councilmember Liccardo may have some further suggestions. So I'd like to offer the memorandum I signed along with councilmembers Hu.

>> Mayor Reed: We have a second based on the memorandum from Campos, Chu and Kalra, that's on the floor, are you done, Councilmember Kalra?

>> Councilmember Kalra: Thank you mayor.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you mayor. I wanted to thank all the members of the community that came out to speak. I would like to thank chief seaman, chief Davis thank you for your commitment and service, and to Mr. Pham, I want to offer my sincerest sympathy. vice Mayor Chirco put it best when she says there are no Solomons in the room. What I've been fascinated by, is I've watched the debate, I don't think that was good for anybody. The interesting divide, what was the most interesting debate is one that big difference and those who don't and actually it's a pretty small group that's in the latter. Let me explain, I think both Chief Davis and Bert Robinson agree about one really important issue. Which is they both believe there is a big difference between these two proposals of what would be released. Tom Manheim suggested there wouldn't be. And I have to admit I think I agree more with tom. And let me explain. It has to do with what Ash Kalra mentioned some regarding the size of these exemptions. I'll just briefly generalize, protect the safety of any person police can have broad discretion to redact and preclude the release of any completion of the investigation or related investigation, third, prevent the disclosure of

legitimate law enforcement techniques that require extraordinary discretion to decide what does or doesn't get released. And appropriate so, by the way. Appropriately so. When I hear about the parade of horrors about what might get released and what might not, I haven't yet heard a very compelling case about some things that might not get released that's already listed here that can't be precluded from then we ought to be talking about those and talking about amending the task force proposal to include them. I do know, by the way, in the specific exemptions, I think District Attorney Carr did point out that not all the sexual offenses are covered, and I'd be making a friendly amendment to see if we can cover. I guess I come at this from a slightly different perspective, from my experience as a D.A, turning over police reports as part of my constitution obligations to disclose information of the defense. My observations really are twofold about that experience. First that I disclosed far more information in those reports, to the defendant, through his attorney, than would ever be disclosed through the Sunshine Reform Task Force proposal. And information that's released to the defendant's attorney and ultimately the defendant, and the friends have accomplices and associates, when we're talking about the safety of witnesses and intimidation of the integrity of the investigation. so far what I've seen I believe these exemptions are pretty -- give the law enforcement the tools they need. If they don't then we ought to talk about what more we need to add. The second observation I've made, is I believe chief Davis is right. This is very resource intensive. I know that because it took a lot of my time, during the time I was a prosecutor. I knew that was important for me to do and not delegate, in the case of a detective, they know their case better than anyone else knows the case. So it's not just something you can delegate to a records case. I don't pretend by the way that we can be perfect in know what we can release and what we don't. But it seems to me the same concerns arise when you take the approach that's offered by the Rules Committee, as well, which is there may be information which gets released which shouldn't be if people are really focusing on all the risks. So it seems to me that if we're concerned about resources and we know we are, we're facing a \$91 manage, hopefully in the very imminent future is what reasonable limits can we put on public records act requests? For those requests that demand extensive, two sizable files and I believe those are representative files. We ought to think seriously about whether this approach is the right approach. So for that reason I had significant discussions with I don't think we were able to arrive at a simple solution. essentially, we're kicking that can down the road. But I wanted to move forward with a proposal and a note that we need some more information to make a sensible decision and hold back. Here is what the cps a written copy of this to direct staff to provide a written report to council regarding the costs of implementing the staff's approach and that of the Sunshine Reform Task Force, in those substances where there is a milk reports act by the same individual or organization. Second, direct staff to develop and propose potential modifications in this policy, in the case where a lot of can, input and suggestions should be sought in organizations likely to make such request. And behind the in return to full council in the near future some considering of whether those instances in which the city does nice face a PRA request for a republics of significantly, obviously concerns about resources and potential abuse. And I'd ask that that proposed friendly amendment be --

>> Councilmember Kalra: Just to be clear, those would be your friendly amendments following the recommendations to improve the Sunshine Reform Task Force task force recommendations? So basically to follow up with the approval of the Sunshine Reform Task Force. I'll accept it.

>> Councilmember Campos: And I'll accept it in that could be tent, thank you.

>> Mayor Reed: There is a friendly amendment.

>> Councilmember Liccardo: I wanted to offer these minor amendments not all of us have the opportunity to discuss these though. I'll go slow there. The specific exempting 1, to modify that paragraph 3 to include the words, "or conspiracy" after the word "attempt. Police reports or an attempt or

conspiracy. Then also to add to that criminal sections for sexual battery which is 243.4, indecent exposure which is 314, and any other sexual related offenses which have been inadvertently omitted from that list, and I imagine some discussion with our police department and District Attorney's office would help. That would be the first minor amendment.

>> Councilmember Kalra: I certainly accept that.

>> Councilmember Campos: I accept that.

>> Mayor Reed: Another friendly amendment in this category. The last is the various information that must be redacted from any police report relating to any McEnery other than the arrestee. There are various account numbers that demand, I would include the words at the other worth, other financial account numbers. Be.

>> Mayor Reed: Let me make sure we follow that one, because the page numbers didn't help me.

>> Councilmember Liccardo: I'm sorry, I'm going to list the exact paragraph number. 6.1.1.03.

>> Mayor Reed:

>> Mayor Reed: I'm okay with that. No acceptable every so another friendly amendment.

>> Councilmember Liccardo: I guess I just have a couple of questions about some of the booking info that was presented by the bear mayor. I think we're all troubled by them. I guess a question for probably the chief or for Rick, my understanding is booking info is I know we already put out the blotter, 25% is book information now public under the right rules?

>> Rob Davis: Booking photos are, there is a lot of confusion on this. There are cases which are cases where they have not been charged there's not necessarily if ability to get access to that currently, under the current California public records act.

>> Councilmember Liccardo: Mutt my understanding is there is booking information this is a released.

>> Rob Davis: If somebody is arrested. That's a big distinction.

>> Mayor Reed: Because I went on the Website for the palm he bake, the department is listing the booking information with the dates of birth of the arrestees. Now I know that leadership of our Department would not be inclined to be releasing that kind of of forecast for obviously the same resigns. I don't know if the booking photos themselves are coming from the department or coming from someone else who is collecting that information but if this kind of information is subject to abuse then I think within the same analysis that staff would be doing on cost they could also be looking another this issue of multiple cases that -- situations where individuals are seeking information about multiple cases for abusive purposes. And clearly, seeking the booking photo of every arrestee, that sounds pretty abusive I think to many of us. In any event I'd like to believe that's an issue we can probably figure out without seeing the parade of horrors that we saw in the case in Florida. On the beam of this is a difficult decision I don't blame 9/11 from coming out on the other side of this? Given the decision, those who may have actually committed the crimes, it seems to me that the controlled release of this information to the public which we have here, I think very controlled will not work the same harms that have been feared. A.

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: Thank you, Mayor Reed. Let me just startle out by thanking staff first. I know that staff members have spent a lot of time on this issue, especially Lisa Herrick and Tom Manheim. Thank you for your hard work, I really appreciate it. Thank you for the members of the Sunshine Reform Task Force? Have access to the words they need. Let me just say that I came into this meeting very conflicted, given my previous experience advocating on behalf of the family of Coca Tran, which unfortunately, it's another incident that's somewhat similar to Daniel Pham's family who are facing it right now. When I reall if data that's been extremely, what I will be doing in the future, how as an elected informal. I was very interested when I saw those images that Mayor Reed put up on the screen and I want

to thank him for the realities and consequences in but I think one of the greatest thing about the availability of the Internet these days that we also have access to it and we spend time looking at different things on the Internet as we listen to the debate and Councilmember Liccardo did that, I also did the same thing. And what I realize is that a lot of the available data that the police department is offering right now is not something to be fearful. I think with the sunshine task force recommendation, the public will have that same data. I know in previous conversations between countyless members of the community I was not in agreement with the Sunshine Task Force recommendation because I felt that they would hinder the police department's ability to protect juveniles and victims of sexual assault and domestic violence should police records wind up in the wrong hands. I was very might interfere with staff's able to carry out other public sworn responsibilities. Of course the cost factor was also a huge concern of mine. However after countless conversations and just reading and doing so much research and spending a lot of time reviewing thoroughly the task force recommendations, especially as they relate to the general and specific exemptions such as the juvenile contact reports and domestic violence supplementals, it is clear to me that these exemptions provide a much balance between a broader protection for place. These recommendations set forth by the tasks are only certainly steps away. We also believe that residents have the right to open public issues are being brought under public scrutiny are usually the best thing we can provide the community as they were shared with plea by a member of the task. These are issues that we know the community is very passionate about, especially when we witness them taking the time like they did today to let us know how we can better serve them. I think that we're very fortunate to live in such a safe community and we have our police department to thank for that. But we are also at a balance when it comes to the public trust with the law enforcement department, that's a very sad thing. But I think tonight should be the dime to bring about change and find a balance between the community's I hope that we can build this bridge together and cross it once and for all and therefore I'm going to 74th Councilmember Constant, thank you.

>> I have a couple of questions to the City Attorney, as I understand it now, we are specified to charge under public records act requests, 20 cents a pay or something like that to do the copy up account knowledge so we're not currently loud to can charge for the cost of redacting?

>> City Attorney Doyle: That is something we'd have to look at. The case law said actual reduction, but that involved staff time for retrieval and collecting the documents. So we'd have to look at that but the general rule is you can only charge for an actual cost of coming.

>> Mayor Reed: Secondly, if somebody wants to seek all of the e-mails that have been sent to a councilmember for the last two years, there might a thousand of them. But we turn those down because that's too many.

>> City Attorney Doyle: I know that Ms. Herrick had an answer, I don't know if we have that at this opinion.

>> Lisa Herrick: There might be some tipping points where the I think that a resource argument underpinning the balancing test, the balancing test explanation is not tested. I don't know that it's been tested. And usually it is something that is more supportive that spars the balancing test so if we think this all, we could not say no just on the basis of its two many or at least there's no sposhtsd for that now? Did.

>> Not that I've seen, correct. I think it is something that would have to be litigated.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thank you. Obviously Councilmember Liccardo and I see things different here. But I do agree with one thing that you said, really, the case who knows the most of the case, should do the redacting. It's very staffing issue in the police department particularly in the detective bureau. I

remember. When we got the five year staffing plan a few years ago, we haven't done anything on that. There are a lot of positions in the detective bureau that were a concern. Chief can you talk a little bit about your staffing in the detective bureau?

>> Rob Davis: Well, we know the last several years, ten, 12 years, holding the line on our response in the field, making sure our response times are good, we're responding those 911 calls, over the years we have basically cut those positions within the detective bureau, to keep hold the homicides, sexual assaults games et cetera but again, cutting back on the burglary, financial crimes, credit card theft forgeries these types of things, even simple assaults at times. So what we've done over the years basically is kept the patrol division whole as best we could but the cuts have come from the detective bureau. So when we're talking about needing to redact reports, really the people who would need to redact these reports are the people who are familiar with the cases, particularly when you look at the cases that we displayed tonight. Under the proposal of the task force would be subject to exemption. We would have to now delineate that these officers now have a responsibility not only to try carry their caseload but I guarantee you there will be requests for information and we're going to be inundated with these types of requests and a significant amount of time that we are currently spending to try do detective work is not going to be done redacting. The other concern I have because of the rotation policy which is a very positive thing for our department you might have a case that is eight months old but the detective is working in patrol division. We are going to pull the officer from the patrol division, to if the person is retired we run into another problem. Again with the exemptions that have been proposed through the amendments is that we could simply end up with a report that's 25 pages long in which 98% of it is redacted and we're right back to where we started with trying to get a summary. So we would be spending significant amounts of time redacting just to end up with what is currently the state law anyway. So again we don't have the detective staff to do what could potentially happen if there's a significant number of requests coming on the reports. One point to highlight this, again keep in mind we've talked about this in the budget cycles before. This is the city of a million people, this is the 10th largest city in the country and we have six detectives to handle our burglary rate, it is unheard of for a major city to have that low of a number and I'm very concerned when we are going to be deviating and taking the time from detective work and taking time on the public records act.

>> Councilmember Constant: I remember when we were talking about this very thing, I asked you specifically why we have homicide sergeants answering the phone, I recall your answer was we didn't have administrative support. Is that still the situation?

>> Rob Davis: Yes, this goes back several years, six or seven years when there was vacancies, the work didn't go away, the detective sergeants now answer the phone. When the one single individual left is not able to do that.

>> Councilmember Constant: So I also wanted to explore a little bit. I worked as a detective in the fatal accident investigation unit in the robbery detective unit and in vice. And I remember quite often especially when I was the admin officer, triaging them and stamping with the big stamp, NM for no manpower. How many cases do we not get the chance to investigate, because we have no manpower, especially in property crimes and cases with substantial follow-up?

>> Rob Davis: Again, we've tried to keep those whole but where you'll really see those stamped no man power is in the financial crimes unit with burglaries, we have no detectives to work, you'll see those in burglaries, financial crimes early financial abuse these types of property crimes if you will versus the person crimes. I don't know if exact statistics it would be a unit by unit basis but clearly already there are more in the nonpersons crimes versus the person crimes.

>> Councilmember Constant: I want to talk to you about robbery investigations. I know in my experience

both in the field and as a detective that robbery cases it is not uncommon to have four plans for banks or businesses, details about their security cameras and installations details about where money is stored whether it be in a business where they store their petty cash or large receivables, things of that nature. From what I read unless I'm missing something none of that stuff would be eligible for redaction or exemption under this policy, would it?

>> Rob Davis: Not as I read it. Everything would be disclosable, except for those exclusions that are carved out. We have concern with the blanket policy, because to try to sit down and come up with all if reasons, you have to have some discretion about what to release.

>> Councilmember Constant: Going into financial crimes and high tech crimes would it be safe to say that the method of operation, the steps that someone takes to be able to pull off a crime, and the, I guess they're maneuvering in their method of conniving.

>> Rob Davis: You would have to think of every possible way the less than honorable, that's a whole lot different matter of time than what's going on in this report, let me write the summary of the California public records act, it might take me 15, 20 minutes to do that,.

>> Councilmember Constant: If I'm a little crook in training, I could come to the police department and ask for 15 police reports on identity theft and 20 reports on banking and Internet theft, and aside from the financial account numbers, which are probably already no good, because people have blocked them, all that information for me to go out there and get my criminal university would all be available for me just to come and get from you right?

>> Rob Davis: Yes, I read it, yes.

>> Councilmember Constant: See these are the things that really concern me. We've centered our discussion around the in-custody cases but we're not thinking about the robbery in my house or the home invasion in my house or the burglary in any house, we're not considering the cost of manpower and even though we can't recover the dollar amount, even if we could, maybe someone says okay, we get a court case we can charge for all the redacting, we can get the five hours that it took an officer to take it. What with the opportunity cost of those additional costs that are now investigated, how about the people who are not served because an officer is pulled from their duties? I think we have to weigh that. When people are talking about their positions and where they are and whether they've been convinced or not, the hurdle I can't seem to get over is I have our different many the person who is in charge of prosecuting our crimes saying this is an all of item. I have our police chief, a police chief pr one of our adjoining agencies, all the police chiefs from the county have opined that this isn't a rational good idea, yet people are thinking this is a rational good idea. How this is going to affect not only the in custody, he got drunk and arrested case, what about all those other things out there? And there's a wide variety of cases that our police department handles every single year, and I don't think people really understand the depth and the graft of what we're talking about here. I implore you to think Mr. Some of those things I just own up. If you own a business do you want them to know the route your employees take with their night deposits and what their routines are? That is something that would be nonredactable in these report. And I think it is a serious issue. I don't think it's merely fear mongering as has been subject. I think these are real threats to public safety and we have the real professionals the people who do this every day telling us it's a bad idea. If that's not enough to make you stop and wonder I'm not sure what would be. Thank you Mayor.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you mayor. I almost forgot I had my light on. You know, I just can't get there. As a former teacher and a board member of the YWCA where I saw firsthand what victimization was all about, in the light of the incidents of stabbings and burglaries and robberies that are proliferating today, once it's out it's out you can't get it all back, you can't say, all right, we're going to close up the bar

now that the horse is gone, the cost of duplication fewer staff available, a huge number of retirees that I believe are expected this year, would I be right with that? I don't know how we can do all this and so I agree with the mayor, I think the timing is not right and the worries are many. Thank you.

>> Mayor Reed: City Manager had something to add here.

>> City Manager Figone: Chief Davis, over the many, many months you and I have been talking about this and wrestling with this issue I seem to remember you raising concerns regarding cross jurisdictional issues, and working with other agencies and how, then, San José might be viewed or cooperated with that. Can you comment on that police?

>> Rob Davis: Yes, I alluded to it in one of the statements I made but basically our concerns, knowing that we now are the only city in the entire state that has the recommendations coming forward with this proposal and the exposures they request would have a chilling effect on their willingness to do so. I can just tell you that if there's an adgoings, find its way into the police file which would then expose our files through that process. I'm not just talking about state agencies, or local agencies. There are state agencies and there are federal agencies that share information with us. And I'm highly concerned as we're entering some of the times that we are entering in in which we have really truly been relying on our relationships with the federal government to suddenly have that relationship turned off. Remember we're also talking about statewide coming up with programs that would allow agencies to share information, so that we could tap into the data in those reports in a methodology or in a manner that perhaps would allow us to soft cases. Because became of we're creating one big records management system of the smaller records management systems. This is already going in for officer in the state of California for a program called cops links and again, this would certainly make us stop to pause and say can we put our data in, will people accept that data, again we're talking about ramifications of unintended consequences that just go on and on and on. This is why there is unanimous consent against all the agencies that this is knot a good idea. I do City Manager have huge concerns how we're good to be treated in terms of getting written reports from our partner agencies.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. How do I say this, to try to manage time here, I don't think I can capture the eloquence this evening of Vice Mayor Chirco or the thoroughness of Mayor Reed or in the field experience of Councilmember Constant or the brevity of Nancy Pyle. But let me just try to go there, if I can. I've heard something tonight that you know if exemptions are so broad you could drive a truck through them, I'm not sure why we're trying to put more on them. Because in the end this is something that's difficult to manage. And Tom Manheim, if I'm correct and if I heard tonight, that no one from Public Safety, was actually on the sunshine task force.

>> Tom Manheim: That's correct.

>> Councilmember Oliverio: And when I look at the sunshine reforms that were passed and I see 34 of them here, most of them had to do with things that people were really concerned about. Publishing an agenda in advance so people knew what the council was going to vote on, dealing with lobbyists, dealing with campaign of course, the real true sunshine thing that the common resident was talking about. And then when I hear the resources to manage this, and it might be a difficult question for you but what type of resources would you even need to manage on a full time equivalents sworn and nonsworn?

>> Rob Davis: I'll give you an example, we made 200 and these are for public intoxication reports, very simple one to two pages long, that took hundreds of police officer time alone. To go through them, and photograph them. I'm not talking about the time from the city attorney's office to review our work, this is not a simple task, that we're asking -- that you're asking us to do if you would approve this. This is huge and it's one of these things where woo would simply go back to the drawing board and to meet the

expectation what we clearly feel will be a tsunami of requests that are coming in on us.

>> Councilmember Oliverio: Chief, I don't think I mentioned this you've decided to open the Kimono, to have access to see if they could find any issues with the City of San José and I think that's just a minority of cities that have done that, I think just Denver --

>> Rob Davis: Denver, Salt Lake City and Houston.

>> Councilmember Oliverio: Now, chief, you and I in private conversations don't always agree, but you make sense to me with your points this evening of running a department with the resources you have and in dealing with the situation that could be as definitely highlighted by the mayor so I'm with that. I was a candidate for city council opposed by the police union. I don't owe anybody anything. But in the end, I feel that what came out of the rules committee was fine. I cannot be supporting the obviously lots of work that my colleagues have done on the other side of the memo but that's not something I can support tonight. And I guess the big thing for me is is, I really have a hard time sitting in this position, and Vice Mayor Chirco talked about the cirches in advocating and goffs. I have no funding to follow the consequences and to pass on new rules when I don't -- and I know there's folks on the other side that are extremely passionate about this, but in the end I need the one that's pruned and making sure that water gets delivered down the sewer. And other things that great skis cities do. But I can't be pushing forward with rules that don't come with a funding. Now if someone wants to say provide a funsing sort that maw its, those are my statements thank you .

>> Mayor Reed: City Attorney has something to add.

>> City Attorney Doyle: Councilmember Oliverio, I sort of wanted to figurey back or what he says, those 647,000. We saw a lot of things that wasn't redacted. You're going to miss something.

>> Attorney, you say you would dpleed a full time extension if this was -- I I think that's fair to point out, that your department would be impacted which is furthermore consequence I didn't consider so thank you for pointing that out City Attorney.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you of thank you, player. I want to thank the task force for all the efforts, rltsdz I I also have been an advocate in your shoes many years ago. I also want to add my condolences to the Pham family for the terrible scar you're experiencing and wish you heeling in the days to come. This is a really tough decision. I could never say it better than Vice Mayor Judy Chirco who absolutely captured the highest level of sentiment and I've gone back and forth as I sit here listening to this debate. I'm concerned about if victims, I'm concerned about the visms organizes that have come forward to say they do not support the task force situation. I'm concerned about people who are arrested, who might be innocent and information might end up on the Internet from what we saw and what that there's lots of information on the Internet. it doesn't necessarily mean that's how I want to base a policy though and what I think is happening in Florida. I'm not saying they're saying that. But I think we have to do what's right for our city. The cost that we're talking good are compelling, it shouldn't be based just on that because we could enact a policy and then move fort when we have the wherewithal to actually plighted it. So I can't just say cost another that does trouble me. All of the concerns in the main thing I would say is public safety outweighs trumps everything that we have to make sure that when all is said and done that we do have a safe city and that we protect our citizens and that has to come before everything. The last thing is the I talked to Bobby low pes at the public safety hearing, some of you were there, I thought there were rks positive reports that have actually happened since we last looked at the public intoxication situation, the homicides were down.

I was troubled when Bobby told me no member of the POA was missing, victims' rights organizations are missing. So I do think that some of the voices in the community were not part of this. I understand it's two

years later and I'm brand-new but I'm up here having to make those decisions and those boys whose hearts could be part of that discussion. This new rms management system, we would have the capability I'm hoping of being able to release data in a Moyer efficient way. When we have someone here coming on that, I was a little concerned that the chiefs said it would be even, I want to be able to release more information and make the public safe, too. Not is have to have somebody manually going to through rooters have some way we can do it that allows us to sift through more information and do it in a more efficiently manner. Because I think no nature what we decide here today we should be open more records when we can, not less, that the standard should be again public safety but certainly not to protect police officers or the government from having to release information. So my intention would be, I want to find out first about that data system in here in which you have to say how that can help us as we go forward be able to release more information and to get out the concerns that the community has.

>> Rob Davis: Yes, Councilmember Herrera. Certainly with the records management system where you have what's called an in-filled report writing sustain, they're using computers rather than pin an paper right now. The reports writing procedures could be changed in such a way that when an officers could be in the event that this ever ways disclosed? So that in the future if somebody wanted access to report you could go in and electronically pull notices it would require some review, but it is a whole lot different report to pull I up and than it is to have to pull the report by hand, read through the paper report then if you need to do something pull it have somebody write the summary by hand because they'd have to start all over again because if you used the current system you wouldn't release it all. If you used the newer force, this bottom line is it would become much more efficient because we have immediately assemble through the exeurlt system.

>> Councilmember Herrera: I understand the term summary. Do you think there would be time to be, nor category, more information to be able to release through this system?

>> Rob Davis: Yes I think again what captain Kirby did and has been doing so efficiently over the last year and a half or so, has been working with the committees and carve out some of those earlier for instance if a taser is used, but we're stating that we would be age to do that. Above and yorntd what's rioter by the C PA, information be put into what that electronic synopsis would be, electronic summary and again it would become more efficient and effective to be iebel the pull that.

>> Councilmember Liccardo: Do we have a time line ck? Nor obviously the city saps facing a expectation crisis and as to whether or not we go forward right now or quickly. The great bugaboo without going into too much detail is the hardware. We've done a lot of work on that and when woo nobody who wants to get that RMS quicker than does the police department.

>> Councilmember Herrera: Thank you. And thank you for the answer to your questions and at this time, I want to say that I support -- I'm going to be supporting the mayor's motion and the mayor's recommendations. If I could add discussion that law enforcement reports be brought forward, again once the RMS is number.

>> Mayor Reed: I'll have to get back to you. Ciblg.

>> Councilmember Kalra: Thank you, mayor. I believe there is a CPRA exemption for a request that is overly burdensome but that's something that could be followed up certainly [Ash] I also checked out the palm beam, booking parlor, there is serm be a different environment and sentiment in Florida. And you know ultimately I'm asking for support for the motion that the memo that me and my colleagues signed as well as the amendment. And I want to elaborate very briefly that Councilmember Liccardo put forward particularly in raters to crowd many notebooks wapping as well if they're still watching at this late hour. And that is we definitely want to have staff come back and let us know of different options that are out there for a lanch request? Around I certainly implore organizations whether it's media or civil little bit

groups or whatnot in organize up what you would be willing to do to decrease that as well. I think all of us understand if rack of resources that we have and ultimately it's for the benefit of the community and particularly the lample organizations that may be able to l benefit, certain like to hear what some of those organization he can also offer, in the staff trying to come up with other alternatives as well. In terms of some of the other comments made, Chief Davis had mentioned about having to pull a detective from patrol division in order to evaluate a report and so often and I grated, I mean the time that it takes is an issue but you know, because of what I think is an 77 way in which feex rotate centers and so on and how they Motate through different assignments, if they have to come back on cases that does happen, that is a letting in regards to Councilmember Constant talking about the ability to criminal in training I guess to learn methods of coming 95ing, again as has been stating by Councilmember Liccardo and neung, the reality is, the crimes you are referring to, you could go to google and get that rimp Toniful admonish quickly, San José or any other. And in terms of specific forecast what I have if you're a victim and so onwhere your safe hidden are your blueprints you privacy, as well as others -- oath exemptions that are chute in the task force report. And there was a comment that I don't know if it was Councilmember Herrera or one of the other councilmembers, talking about victim' rights groups. I think they were hurt and that's why we have if specific exemptions you there were some came forward in support of the task recommendations, the concern that at least I heard from most victim screwups had a chelg effect on the incumbents coming in. Still, I would support any efforts we can make to support victims in coming forward. And a final comment, couple folks had mentioned about talking about the dirnltid and the police chief, couple of police chiefs and police associations are against this. We have all of them against it then maybe it's not a good thing to do or we have to rely often their expertise. And I certainly admire and respect and take to heart and listen very closely to what any law enforcement expert or law enforcement agency has to say. However we can't always dict our policy strictlily on the policy of law enforcement alone. There have been opportunities or there have been experiences in the past for example, proposition 36 which I believe policy wise was a good thing to mandate drug treatment for low level offender or first time offenders and what have you that majority of law enforcement and District Attorney's around the state were opposed to, amendment to the three strikes law most of the DAs and police chiefs were against it I think it was the right thing to do especially since we have one of the highest in cars ration rates on the planet. The opinion of law enforcement, is important, we should listen to it carefully, including the opinions of a DA obviously but it doesn't mean that the policy should be dictated, as Councilmember Liccardo very well put it some time ago I think at this point the information is out there and I think that you know this is an opportunity truly an opportunity for us to allow for greater sunshine, allow for us to build some of the trust in segments in the community where we do need to do it and I think ultimately we need to continue to build trust in the communities where we have trust for law enforcement in the community. So I would just ask for support of the motion along with the amendments, thank you.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. First of all, I want to recognize councilmember Ash Kalra for your thorough memo that you brought before the council. I know that this is something that you've been working on and been following. And I was very supportive in signing on the memo and I want to recognize Councilmember Liccardo forlooking at this memo, and saying okay, this is a good start but we need a little bit more. And instead of dismissing it, being able to say, lets add onto it with further checks and balances to come back to the council so that we can strengthen something that we have before us. So thank you for your leadership on that. Chief, there has been a lot of discussion and I know the hour is very late. But I think one of the things that I continue to have a big question mark is, when we talk about people requesting these public record documents, I'm sure, and I would be very shocked if we

didn't have checks and balances on a process on when people request something and if somebody requests 20 records, I would believe that that would send a red flag within the administration, that something's not right. So can you please explain, our checks and balances on how we, as a police department, receive information before we process it?

>> Rob Davis: Perhaps the easiest way to describe, I'll try and be very brief, councilmember is when we receive a public record act request and usually it comes in the form of a letter or an extensive e-mail perhaps. But we take that we review it, by law, we really don't have the right to question the reasons why somebody would ask for certain types of data or even the numbers. In fact you 98 recall a couple of years ago there was a group that went statewide to all the different police departments and asked for public records at the counters and San José got a really low score. When someone requested for the financial reports of the Chief of Police, and the person behind the counter said, why do you need it, we failed. It does act as a red flag to us but what we simply do is we call our City Attorney, here's the request we got, we work with the stoarches office to as to why we feel this will be overburdened, perhaps even tawgd to the people to see if there's a way that we could facilitate some of the information that they're trying to get but the bottom line is we really can't act, can we do that in tandem with the city attorney's office.

>> Councilmember Campos: And my question whether we can deny the question, my question is we do have an opportunity to interface with them to ask can you narrow it, what's the scope and at least there are opportunities for the City Attorney and your department to get involved so that if there is something suspicious, you're actually trained to recognize those signs?

>> Rob Davis: Yes, we certainly can respond and we would be doing that through the city attorney's office. But again we would be cautious in how we approach the request so we're somehow not intimidating, what are you planning on doing it, et cetera. S I think that's why we have the chief do those difficult questions.

>> City Attorney Doyle: Well, if you get a large request typically we help respond and say it's going to take many weeks or longer to respond and then we might want to try to work with them and say what are you really looking for and can we get certain information to you quickly? And it's not a negotiation but trying to get to how we can get the information out in a faster manner. But if they insist that they want that information then, the department has to respond.

>> Councilmember Campos: No, I understand that but I think that we also know that if somebody is going to do something very malicious, going through that scrutiny in having to sit down and say, can we negotiate? My point is if you have somebody that's requesting 20 records to do something, do educate themselves too heart on something. Maybe we have but I don't think we've seen that history happen maybe we have if you can answer that.

>> Rob Davis: I think the majority of requests we get is when we get one that's asking for specific records usually they are asking for so many data they usually want to shes.

>> Councilmember Campos: But not for a crime, to continue to do crimes?

>> Rob Davis: We don't always -- I see your point, councilmember.

>> Councilmember Campos: And Councilmember Constant this wasn't directed to you but I just want to make a point that I think that we kind of got off on the subject of what this memo was about archtd it really is creating openness and be thoughtful and look at what the task was tasked to do and cox up with an analysis of how we could be respectful protect the witnesses and victims and survivors from further scrutiny on this. That's why I signed on to this and that's why I made the second motion to move forward on this. I'm hoping that my clees that are not willing to support this that they'll reconsidered it. I believe that councilmember Ash Kalra and they have more checks and balances to bring it back to the council so there can be further discussion. So I would hope at least one of my colleagues would reconsider.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. First I want to disclose that I have talked to Schuyler Porras and Bobby Lopez. I would like to thank the public for staying up so late with us, the Sunshine Reform Task Force committee working on their proposed, councilman Ash Kalra, I believe there is a middle ground somewhere. I would like to thank Councilmember Liccardo for your friendly amendment, I think this would bring us closer to a middle ground. Until we can find a million dollars ground, I would like to go for policy and community trust. So I will be supporting the substitute motion. an on the case of Mr. Daniel Pham I would really like to ask the police department or I just feel that we should do our best to provide the family disclosures that they can move on, on their lives, you know? I visit Mr. Vin Pham shortly after Daniel Pham's shooting and I can-d it tells you he lost quite a few pounds since I last saw you, so take care of yourself. Thank you very much.

>> Mayor Reed: I think that concludes the council discussion. I'm not going to support the substitute motion. This is a Public Safety issue. It is a very important Public Safety issue for all the reasons I've outlined tonight so I'm not going to support the substitute motion. On the substitute motion all in favor? In favor we have Kalra, Chu, Campos, Nguyen, Liccardo. All opposed? That would be Oliverio, constant, Reed, Chirco, Pyle and Herrera. So the motion fails on a 5-6 vote. We now have a motion on the floor which was originally placed on by Vice Mayor Chirco sometime ago, to approve the recommendations coming out of the Rules and Open Government Committee. Councilmember Liccardo.

>> Councilmember Liccardo: A question for chief Davis. Is there anything you can say publicly at this point, not now that the grand jury proceeding has resolved about the Daniel Pham? I'm assuming there is a pending public records act response?

>> Rob Davis: I realize the councilmembers that have cngd that as well we hope that they understand the police department fees it's tragic as well not just for them but for everybody involved in the case. But in terms of the public records act request I believe it was yesterday that we've received a request for these things. First of all, we sit it down with the dirntle office. This is a little bit I'd be reaching out to the District Attorney's ooffice going on there that we would be stepping on if we were to take a look at this. Clearly we'd be working very closely to determine if there is something we could be doing or should be doing.

>> Councilmember Liccardo: So those conversations took place?

>> Rob Davis: Absolutely.

>> Councilmember Liccardo: I see the investigation seems to have concluded. in any event, I think there were a series of questions from Councilmember Herrera that I think were well directed going to this RMS database issue I think I would like to believe that whatever middle ground that Councilmember Chu could be found through some technological solution. Is that a fair estimate?

>> Rob Davis: I wouldn't want to put an exact dollar amount on it. I'd just say it's less than that to buy the ooms operational software. We're going to be using it for a long time. I don't want to write a check that the City Manager can't sign.

>> Councilmember Liccardo: You're way off?

>> Rob Davis: Way off.

>> Councilmember Liccardo: I'll concede.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: I would just like to know if I could offer a friendly amendment to include the idea of how this RMS system, how the records can be brought deport, and a discussion of law enforcement records, first are grot forward once your capabilities are known.

>> Mayor Reed: I think that would be a good idea, the Rules and Open Government committee, lets

make a release of what we will release, and then tell them how much, different way about what we will release but we don't have to scare everybody with the term all. So I would support that kind of freptly amendment.

>> Councilmember Herrera: I just want to say again, I think we need to move. Always the goal would be to great sunshine. I would be in troubled by one of the speakers that said even under our current ability to reeses records, that that other localities seem far more open than San José. I have a great respect for the police department and for you chief. I just hope we can continue to be more open or work to release things, because even if we had all the sunshine in place it takes a willingness I think on both parts to really don't about e-the spirit of these rulings and really be releasing information. Even being completely redacted and almost no information being released. I think as we move forward we have to keep a really trying to find a pathway to getting that information to the organizations that are represented here and I sin seerlt hope that we can move in that direction?

>> Mayor Reed: The.

>> Councilmember Chirco: In what point in the RMS research are you?

>> Rob Davis: Yes, we have don't quite a bit of research on it, we have a requesting, difficulty on we've if the budget were there we can mover tomorrow. We have a good idea away it will cost. The memos are done, the RFP exists, it's to move that with the City Manager's office.

>> Councilmember Chirco: Do you see it as an informallal nome that goes to council? I'm really open to a suggestion but minimum I'd like to come to rules, definitely information coming over how that would there musting some software companies that are out there that are willing to.

>> Councilmember Chirco: If I may ask the City Manager for her thoughts on this ?

>> City Manager Figone: I haven't had the chance to review there RFP. Every since I walked in he has told me it's important. Ohowive, we want our system to work so I need the space to be able to sit down in front of him, to ensure that this could get over the goat line. What I would like to.

>> Councilmember Chirco: To appropriately time the presentation so it has meaning and is in context, would that be acceptable?

>> Councilmember Herrera: I was even thinking if it's possible through whatever this doesn't have to be part of the motion, but we can try to use ways to move forward in terms of a fight plodge.

>> Councilmember Chirco: I would like to leave all that with the City Manager and the police chief. If it's okay with the seconder of the motion?

>> Mayor Reed: It is okay on the maker of the motion, so it's okay on Mr. Familiar heaves, ieflt going to exroalts my condolences. I'm recommending to the rules and open committee that the committee directed on June 3rd as we directed on June 3rd that we hear imloive the request of the in connection with the fatal shooting May 10, 2009. On June 3rd, the Rules and Open Government Committee heard an appeal of a public records request denial. The Mercury News, the committee heard concerns from the different that the premature release of the tapes, the committee determined this is on June 3rd that once the grand jury had concluded its investigation it would be appropriate to release the 911 tapes. As the grand jury has completed its investigation the tapes should become private. The committee will allow anyone about price of concerns to speak to the committee before the decision is made. So I'm asking Rules Committee to take this up on November 4th, that's the memo I've signed it and we'll be discussing it at the rules committee. Councilmember Constant.

>> Councilmember Constant: Thanks, I'll just keep it very brief. I just want to assure people that this move does make a move in the positive direction and remind people if you have issues with any public records request with the police department or anywhere else in the city, often the Rules committee we have a standing item to discuss those, which is an additional form of male so to speak and I know the

committee members take those requests very seriously. Thanks.

>> Mayor Reed: Councilmember Herrera, were you concluded? I'm sorry, Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I want to thank you for the moax you just signed that will help in some way the community and especially the Pham family in moving forward. The previous, the discussion now no way is it a commendation or a condemnation of law enforcement or our police department, bit rather, you know, it's just an effort as a policy maker to try to create an environment in our city that I think is appropriate and to really create a policy or create a city that I think creates an environment of openness without jeopardizing oop that's where I come to this, it's not an he every in where we should go moving forward and I think that the current motion on the floor, I don't-I don't see it really -- I don't see it taking us forward in some ways it may each take us backward in that there's two years or a couple of years done by the task force and it doesn't feel like that work was reflected, in the recommendation the recommendation we have before us is basically stotted are status quo William its falling the CPR rate which is what we have to do 98. I can't support this motion, I don't think it achieves anything beyond what we have to do anyway with the exception of maybe defining a word or two, thank you.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Constant: Thank you, mayor, I cannot support this motion I meal like sits almost a step backwards and not to drag down forever, I would like to make a substitute motion, the act of if I can get a second?

>> Mayor Reed: I believe this would be taken up if this motion fails. Then it could be a motion to do nothing.

>> City Attorney Doyle: That's correct. The motion that's on the floor is the one that is to be noted on and then if trtion a new motion, if the Vice Mayor's fails then you take it up.

>> Mayor Reed: We'll come back to that after the outcome of this vote. I believe we have a motion and second on the floor and set forth by vj. You all in favor, aye opposed, the opposed is Kellar Kalra, Chu, neung, Campos. So seven-two vote. The hour is late, we have some other business to take up, hopefully, it won't take too long because some of us are getting on an airplane in just a few hours. We'll now turn to land use item, 6.2 still left from this afternoon's agenda, that is the U.S. 101 Oakland Mabury transportation policy. Motion to approve. Councilmember Liccardo got the motion. I have no requests from the public to speak on this. All in -- Councilmember Chu.

>> Councilmember Chu: Thank you, mayor, I just wanted to encourage the city staff to actively pursue BART participation in the traffic development policy, because that Mabury intersection is very, very important for the future BART station and Berryessa station. So.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: I just want to be clear about the issue of funding and how we are moving forward. Manuel Pineda is here, thank you Manuel. I realize we're looking at a couple of options that staff and council will ultimately taking up a few years hence, regarding the trucks of Oakland 101 imraing only or you really instruct neither, but you have a construction ofsen.4 million that can be spread around. Owfl, we want both as Councilmember Chu pointed out, are we relying primarily on funding from north San José for that or is that funding that's going to come from development in snort side or Japantown or both, I'm trying to figure it out.

>> It is going to include both some a contribution from the north San José area policy as well as a \$30 million, from those areas. Development in the area as well as downtown North San José and federal fund being.

>> Councilmember Liccardo: When we have these options on page B north San José is going to be

developing and we're going to be getting fees from lots of sources and in fact there might be a lots of options, we can do both if we have that money?

>> That is the goal of the city is to construct both of them. And for example, we have full funding for Mabury 101 out of a different source, then we would require flee plarkt to move from get much them corrected.

>> Councilmember Liccardo: Thank you for clarifying that.

>> Mayor Reed: Are you done? And comuf, did you have anything to add on this? Okay, lost track of where we are. We do have some speakers on this matter, I think. No. Other matters. This is item 6.2. Nobody wants to speak on 6.2 as far as I know. We'll get to those items in just a minute. The U.S. 101 Oakland Mabury transportation policy, all in favor, opposed, none opposed, that's approved. 11.1, the motion is to approve the consent calendar item. All in favor, opposed, none opposed, that's approved. 11.2, rezoning real property located on both side of Berryessa road west of Union Pacific, known as the flea market. Let the record reflect that my staff has expoan with is Eric Shanehauer and others. Councilmember Chu.

>> Councilmember Chu: Thank you, Mr. Mayor. I regarded and spoke with detached family units would add to the divert of the projects and was support Planning Commission's recommending to allow the detached un.

>> Mayor Reed: There was a motion to support the recommendation from the Planning Commission. Was there a second? I thought I heard a second. Councilmember Pyle has the second. I do have two people that wish to speak, the applicant and carey Hamilton. Councilmember Campos want to speak and staff want to speak so I think I'm going to go to the staff. Staff first.

>> Thank you, Mr. Mayor, if key policy before you tonight poses the additional requirement for since family detached housing at the free plarkt site, adjacent to a further px sinlt family housing at the northern edge of the property and staff is very concerned about the addition of more single family house at this key BART station here in San José. This BART station is a key location for transit oriented development and the plans of appropriate uses is shrill critical. This is more than just a local issue. The VTA has applied for \$900,000. One of the planned development areas for the San Francisco Bay region. if we start dwindling the ability for this site to produce the appropriate mix of high density housing and commercial we start heading down a path where we will not be able to achieve the true vision as the new task force for the gin, in gem, gas station at the retail center in the north however we do respectfully request the denial of additional single family housing at the Berryessa station. Thank you very much.

>> Mayor Reed: Let me just verify, Councilmember Chu's is detached is that the main difference? Okay. We'll now hear from the applicant, that would be Eric Shanehauer representing the bum family.

>> Good evening, Mayor Reed and members of the council my niem is Eric Shanehauer he I. We're requesting that the commission did not agree with city staff on one key point. the plodges imhongt that our proposed project conforms to the density already in our approved PD zone, there, it should not matter, that we proposed some space in between our tone home units. In the second, makes 20 untsd beer ager in the area highlighted by ors. All of our proposed blocks of housing exceed the 20 units per acre and overall the units exceed 30 units to the acre. Of our approved zoning. Exhibit C shows that all of the phases of the project going forward will achieve the density anticipated and expected in the transit village. Our request to you to detach some of our town homes will only apply to two blocks of the entire project. Only 3.5 acres of a 120 project and only 88 units of an allowed driveway aye 88 the units will help us sell and occupy units more quickly which will help us attract major retailers for our shopping center and it is important to the neighborhood that we have a diverse range of housing types that will attract a more

diverse population. As you can see in exhibit D, whether attached or detached we are approaching a very urban style for all of our units which will set the stage for an even more urban neighborhood as future phases of development are built closer to the BART station. These blocks are 2,000 feet away from the BART station. Our city is in economic crisis, through June of this year the city approved permits for a grand total of 40 housing units. One would hope that the city would be open to projects like us, so we can get our family moving again. We hope you agree and appreciate your. Thank you.

>> Mayor Reed: We have Carrie Hamilton and Cassandra Blair.

>> Good evening, councilmembers. I think some of the Planning Commissions who voted wanted to be sure that their intent was reflected in their decision and that is to see something very close to or exactly what was shown in the pictures above and not to drop the densities further in terms of single family homes so that it would still read that intent and I don't know if staffer has dmi recommended language to do that, and further restricted the motion. And also in terms of the prohibited uses, in terms of vehicle uses if there could be some clarification, I know that the intent of the community early on when we discussed this project is to make sure we didn't somewhere conflicts or noise issues and that's why some community desire to be emphasized that when a project is actually built, that that is strongly taken into consideration. Thank you very much.

>> Mayor Reed: Sandra Blair.

>> Hello councilmembers, mayor, I admit this is very new to me but I had a class assignment and I had to stay this late and I am going to say something tonight. I'm actually here I go to San José State university I'm an environmental studies major and I have to admit planning is something that's new to me and I can tell it's something that's really really important. And the higher the density can be I honestly believe it's just better for our future. Especially with BART. I currently live in Fremont. I've been a San José resident for many, many years but I can't handle the commute so I live there. I live very close to BART. I live in an apartment complex where there's 500 units and it's amazing. I love it. I see so many people parking at BART, I see all the other multihousing units near BART, I think with the development San José would really really prosper with the highest density possible. I think with BART coming to the area it will be very exciting, and who needs a car, right? Thank you.

>> Mayor Reed: That concludes the public testimony on this. Does the applicant want a rebuttal.

>> I just wanted to clarify care Cerri Hamilton's comments. ..

>> Mayor Reed: .

>> Laurel Prevetti: We have not built any of the housing, the most dense portion of the project is on the south side of Berryessa road. This small action while it would retain the minimum density of 20 acres, we essentially are starting to reduce our margin for really being able to achieve the full extent of the project. So in other words, if the ultimate developer decides not to go with the 30 units to the acre as shown by the applicant this evening, but instead goes all the way down to the minimum of the 20, which is allowed by the zoning before you tonight, we would then be more reliant on the other portions of the project to in fact be able to move the density back, it is theoretically possible but we don't have the necessary certainty that we would actually achieve it.

>> Mayor Reed: This is an important transit oriented development site, we are going to put a BART site next to this now I was opposed to converting this to residential, a long long time ago, but it has been converted it is housing and we certainly need to get a lot of units out of this. That is part of our master plan, part of the VTA plan, it is a TOD site where we have a great deal of -- well it's bare land basically for purposes of development. So we need to achieve the densities and it's all important to get the densities, efficiency, all the things we're trying to do with transit oriented development. But the question is whether or not this particular piece of it you know somehow interferes with doing that and I don't see it interfering

with the rest of the site if the applicant and the other than think this is just the beginning of coming in and nibbling away with more and more single family detached that is not what I think has been recommended by the Planning Commission. I certainly wouldn't support that because we got to get units out of this site. Councilmember Campos.

>> Councilmember Campos: I just need to disclose that my chief of staff met with Eric Shanehauer.

>> Mayor Reed: Vice Mayor Chirco.

>> Councilmember Chirco: This is the flea market site, isn't it Laurel?

>> Laurel Prevetti: Yes, it is.

>> Councilmember Chirco: And I remember when it was converted from industrial lands or jobs generating lands to residential and it was -- the compelling reason it was going to be a BART site is it was going to be transit oriented development so I was surprised with it coming back with a reduction in the residential count. I believe Kansen you have a motion on the floor which would be approval of the reduction for the single family homes.

>> Councilmember Chu: I didn't really see a reduction in the overall site development and I have talked to Laurel. If we need to revise, because I know the Planning Department's concern is that some of the parcel, the floor, the minimum density was little bit too low, and the Planning Department was concerning that if everybody built to the floor, to the minimum density, then it will not be able to meet the total number. But this one, I don't think we really have an impact to the overall units, being built in that site.

>> Councilmember Chirco: You know, sitting on the general plan update committee and anticipating the population numbers as well as the jobs we're going to be expected to have in our community in the next 20, 30 years, it gives one pause. So with all due respect, I will not be supporting this motion. This property was converted on the condition that it was going to be high density transit oriented development, and Eric, that's what you came in. That's what you told us. And now, to come back and look to do some reductions, I certainly can understand, and I'm sympathetic to your situation. But the council acted on this because it was the Berryessa BART station. And I think we need to continue with that concept in mind. We can't afford to reduce housing where it is appropriate to have the higher density. So with all due apologies, I won't be supporting the motion, Kansen.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, Mayor Reed. Laurel in essence what I'm hearing is you feel if the housing was attached, not detached, that there would be less chance of any changes happening to where it would lower the density or push it into the fewest units per acre?

>> Laurel Prevetti: That's generally correct. Once we start introducing more single family detached and most likely that will be the very first product that is built in terms of housing we all know then that we will be having some challenges as we start introducing the more dense forms of housing and there might be constituents who will then ask for reductions in the density. So there is a variety of reasons why we believe additional single family detached is really not appropriate in this particular location. The multifamily also affords us an ability to make more livable community in terms of having more shared open space, it gives us more flexibility in terms of prohibiting types. So then the addition of the single system does put a constraint and while I appreciate the urban form that the applicant is suggesting, again this is at the zoning stage and while department is processed we don't know if in fact there will be a developer to permit that specific PD process.

>> Councilmember Oliverio: And vice mayor, another direct hit tonight, the applicant has stated it would not lose density but I have a fear that it would. And to me, it was -- also becomes a sense of what you want to see. And the detached homes looked like anything else, other product you would find in San José that's been built over the last 20 years versus the attached really is the constant theme of where we're

going in this city and the facts of what's mentioned where it's located and I do think the applicant has made a compelling case. I did meet with them, it's on my calendar. But in the end I look at the whole area that's swayed and there is so few places left to build that we're getting to and the fact that we converted it and if you are going to convert it you might as well make it meaningful so I'll be supporting actually planning's recommendation, I spooling to Councilmember Chu but I can't support the motion.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: I read you were going to supporting something like 26 million in entertaining and amendments and that kind of thing. It was quite a bit that was being done in reference to --

>> Mayor Reed: Let's have the staff answer that question if we can the infrastructure cost.

>> Councilmember Pyle: Sorry.

>> Laurel Prevetti: Yes, there are significant infrastructure costs associated as with the approval of the development policy that you just did under item 6.2 it allows for the flea market to participate in those infrastructure improvements in terms of transportation addition. There will be other onsite that will be available in order to support this new community on this particular site.

>> Councilmember Pyle: And the item behind the detached was to primary give you a kick start to get these units sold, because they would be more in demand? Should I rephrase that?

>> Mayor Reed: I'm sorry, that should be a question for the developer.

>> Councilmember Pyle: To make those units a little more salable in today's market is that part of the thinking?

>> It is truly financial. The first phase beginning of the second phase of our project would require a total of about \$26 million in total infrastructure cost. It's a daunting task and simply deattaching the units not having a common wall will generate an additional \$4 million to help us pay for that \$26 million. That's number one. Number two, every thairl we talked to about coming into the shopping center although they liked this area of the city they are dissatisfied with the amount of rooftops that exist in the neighborhood right now. And they want a plan that will generate housing units as fast as possible. And like all development, you can only absorb units so quickly in the marketplace. The best way to absorb them fast is having multiple types of units. So by introduce being this type we will have three different home styles on the project so we can absorb those faster to appease the retailers. And then last lastly is just diversity. We believe a neighborhood is best when you have a diverse property types. This is the only apart of the, closer to the is a stadium is podiums. That is what we want. This buildout is 2818 units. We are talking about accommodating six or seven high rises. This is just one little corner 3 and a half acres to introduce a more diverse product type.

>> Councilmember Pyle: What is the decrease in density?

>> There is no decrease in density. We could build detached town home, we are proposing 18 more units but because we want to put some space between them we have to come and have this discussion. So we could build 18 less units without even coming and talking to you all. We think this is a better plan for the whole buildout of the neighborhood.

>> Councilmember Pyle: Thank you.

>> Mayor Reed: Any other questions Councilmember Pyle? Councilmember Nguyen.

>> Councilmember Nguyen: I just want to disclose that my staff communicated with Eric Shanehauer.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: I've spoke to month Shanehauer, actually this may be for laurel, really, by improving this do we give the player the option of having separated, having some separation between the walls? In other words the market for whatever reason may change and having the units attached is really what the market seems to want for that day. Can the developer have the option of doing that?

>> Laurel Prevetti: Yes. Yes. This adds one more product type that would be allowed in this portion of the project area. The zoning already allows down homes as well as flats, and it's also the podium style development.

>> Councilmember Liccardo: Okay. And Laurel how much -- you know I talked to Eric a few days ago and frankly I thought his position was very persuasive. The only concern I had was the common open space that we'd mentioned. I'm wondering how much do we actually lose here in the common open space?

>> Laurel Prevetti: There wouldn't be common open space in the detached. It would be more like front doors and a back and the alley at the back. ..

>> Councilmember Liccardo: How much do we lose, what would you have if you put it detached?

>> Laurel Prevetti: This isn't the actual architectural plans, we might be able to mix different products even with within a single plaque area. Our concern is once we proceed for the opportunities of single family detached can, the history of this city is we are losing other options aren't typically taken so that's why this does raise some concern. Yes, it is only 3.5 acres and if it is the will of the council to approve this, then you might want to limit this actually to just 3.5 acres of this portion of the zoning. Because actually it could be applied to a much broader area the way the zoning is before you this evening.

>> Councilmember Liccardo: So under the motion we're considering now, it may be detached beyond the 3.5 acres ?

>> Laurel Prevetti: That's correct.

>> Councilmember Liccardo: Eric you're shaking your head.

>> We have made it clear to the staff that we can accept the allowing it to be detached on only 3.5 acres.

>> Councilmember Liccardo: So you would have no objection to a friendly amendment?

>> Absolutely not. Absolutely not.

>> Councilmember Liccardo: Would the maker of the motion be amenable to a friendly amendment?

>> Councilmember Chu: Yes. We were only limited to 3.5 acre prpts so if you wants to make a motion nor a friendly amendment that would be accepted.

>> Councilmember Liccardo: I think I'll just make that clear now.

>> Mayor Reed: Who had the second? Councilmember Pyle had the second, is that okay by you? Councilmember Liccardo anything else?

>> Councilmember Liccardo: Just that I appreciate all the information. Laurel, it's tough out there, we need to give everybody an opportunity to get a shuffle in the ground. This is it, as I said a council this is it, and we're losing density, I don't see how we're losing being in this way. We appreciate your efforts.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I think it really are in support of Councilmember Chu's motion and probably intending anyway. I'm certainly I patient, abiding the concerns of Councilmember Oliverio as well as of Laurel's I think particularly with this site and particularly with this development I request -- comments made including by the mayor that we can go forward with the rest of the project sites and major sure we meet or exceed the density requirements we're seeking there. It does conform and ultimately it's going to be up to us to hold true to what we're saying here and what we want here in this development as we go forward and the density types, the housing types as well as the density, that we would expect from this type of development that is so promising looking forward to BART being there, thank you.

>> Mayor Reed: I think that concludes the council discussion. We have a motion made by Councilmember Chu with the friendly amendment. Further discussion? All in favor, opposed? Opposed some we have to, I believe. That would Oliverio and Chirco. So that passes on an 8-2 motion with come

too. And open forum, Danny Garza gets the last word of the night.

>> Good evening honorable mayor, city council, I'm speaking in a little different direction tonight, specialty need. Regardless of what happens, you're the protectors and stewards of the city. It seems that a lack of strict diversity direction from this body concerning the safety of the disadvantaged and those unable to communicate their special needs is being ignored at best if some greater special needs sensitivity have been used we may not have had the people here tonight that we had and we may not have them in the future. I would hope you would act on this position as soon as possible. I know that there are already sensitivity training in the police department. See, this time it's not an outside agency coming into San José and running all over town, doing the shooting and killing people from behind a building. To the saddest degree it's our police force. A simple man has been taken from his family and the facts are going to be what they tell us later. I promise you politically this won't be a dead issue. And I have a little bit of time. Vice Mayor, if you talk to a wall, it does no good. If you try to communicate with the police at this time, I don't see any advantage in it. Thank you.

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