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>> Mayor Reed: Good afternoon. I'd like to call the San José city council meeting to order for December 15th, 2009. We'll start with the invocation. I'd like to introduce the invocator. And we're pleased to have with us today the Venerable Tiq Pap Chan, founder of the Li Quan Buddhist Cultural Center, and he currently serves as its president. The center serves an important spiritual center for Buddhists in San José. It is also an important source for community support, especially in the Vietnamese community. Venerable Chan graduated from San José State University in psychology and sociology. And I see you have a couple of San José State fans here today to support you. That's always good. Venerable Chan is the current fellow of American Leadership Forum, Silicon Valley Class 21, is also the co-founder and current chairman of the board of directors for the international children's assistance network, more commonly known as ICAN. He is also the organizer for the annual VISEC celebration which draws Buddhists throughout the entire country to celebrate the birth and teachings of Buddha in San José. Venerable Chan, please join us, thank you very much for coming in to do the invocation.

>> [ Chanting ] Good evening, ladies and gentlemen. Thank you for having me here to share with you a prayer before the San José city council member meeting. We are here to work together on the master of importance to our community, and our families. We are here to make it better for our children and our neighbors. To make it better for community with diversity, and this diversity can be a source of strength, only if we know how to appreciate it, and nurture it. We must nurture it with compassion and great understanding. Members of this community and residents of this city please take a deep breath, breathing in, and breathing out, and let us take a moment to pray together. Evoking the presence of Buddah, let our heart with our own compassion to watch ourselves and to walk on, living beings. We vow to immerse ourselves, immeasurable compassions, so that we may completely eradicate from our mind evil thoughts. Unkind feelings. Narrow-mind views. Resentful behavior, and so that our body may be the body of loving kindness. And our mind be the mind of compassion. So that the course of spring might dispel spring into own directions. Submerging ourselves into the spring of loving kindness. We detect ourselves to work as families, our community, our nation, our friends as well as all the loved ones. Whether living or departed, to pray for the abolishment of suffering. No one would take the life of another being, wish harm on another being, and that no being could inflict another being with harm. In this, may only beings know how to live in harmony with one another, like brother and sister, may own beings feel the suffering of others and the suffering of one self. The happiness of others, and the happiness of oneself. With humility, with awareness of the ascendancy of life, in heart and on earth. May mayor Chuck Reed and the councilmembers live happily and may own beings live in peace and harmony. I take refuge in the Buddha, the one who show me the way in this life, I take refuge in the Dama, the way of understanding and love. I take refuge in the community that live in harmony. [ Chanting ] thank you very much.

>> Mayor Reed: Thank you very much. Thank you for joining us. We'll now do the pledge of allegiance. Please stand for the pledge. [ pledge of allegiance ]

>> Mayor Reed: We'll first take up orders of the day. On item 2.7 the agreement with PG&E should be modified with the addition of "and execute" so it reads "adopt a resolution authorizing the City Manager to negotiate and execute a master service agreement." Item 3.2, the Rules and Open Government Committee report for December 2nd should be deferred to January 12th, and on item 9.1, actions related to a national basketball association franchise, I'd like to have that heard not before 4:00. Any else on orders of the day? Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I would like to make some very small but important corrections to the minutes.

>> Mayor Reed: I'm sorry, I'll come back to that. We'll do that under consent calendar, I think.

>> Councilmember Pyle: Okay.

>> Mayor Reed: We'll take that up separately. Anything else under orders? Motion to approve the orders of the day. All in favor? Opposed, none opposed. I'd just like to note that today's meeting will be adjourned in memory of Jim Fox, one of our key developers in downtown. He's been responsible for projects like the Hotel De Anza, One North First Street, and the St. Claire Building, among others. And I know that Councilmember Liccardo has additional words to add.

>> Councilmember Liccardo: Thank you, Mayor. For all the extraordinary progress that our downtown has made over the last quarter-century, you can point to a small number of urban pioneers who took extraordinary risks to convert a blighted and abandoned corner of our valley into an increasingly vibrant core. And you'd start that list with Jim. Jim was a San José original. I had the pleasure of accompanying Jim on a couple of walks through the downtown on a few occasions, and he'd, on every street, pull a cigar out of his mouth, and long enough to point out a single building, single wall, single fixture, that told the story about the downtown and its development and its future. And every street had a new lesson. Jim was compulsively direct and honest, no matter how many feathers were ruffled. Sometimes he even enjoyed the ruffling. In a world we occupy as elected officials I find that truly unique and very refreshing and his unabashed honesty is what I'll miss Jim the most for. I'm I'll also miss him for his good human, his demanding standards for professionalism, his refreshing distaste for drama, his principled unwillingness to ask for any special treatment, his passion for restoring the hidden beauty of San José's past and of course for his trademark cigars. I wanted to thank Kathy, his widow for lending Jim to us over the last quarter-century. Our lives are much richer as a result. Thank you, mayor.

>> Mayor Reed: Thank you. Well, we're all going to miss Jim, that is for sure. Next item is closed session report. City Attorney.

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

>> Mayor Reed: Thank you. We'll now take up the ceremonial items. I'd like to start by inviting Councilmembers Chu and Constant and Pastor John Talbert and Brett Falder, representatives of the Westgate team, from beautiful day, to join us at the podium. Today we're recognizing the Westgate team from beautiful day for their volunteer work to clean up the Alviso community garden. Westgate Church is in District 1, and the Alviso Community Garden is in district 4, so we have both councilmembers here. And Councilmember Chu will talk a little bit more about this particular project.

>> Councilmember Chu: Thank you, mayor and council, for joining me here in recognition of beautiful day of their recent volunteer work in district 4. Beautiful Day, located on Saratoga Avenue in District 1, started at Westgate church in 2004 in an effort to get faith community involved with services project in their community. Through his leadership and vision, John Tolbert, the pastor of Westgate church was instrumental in furthering the mission of beautiful day beyond Westgate church to serve other communities through volunteering. On November 14th, 2009, the team of beautiful day completed two services project in Alviso community. There were 200 volunteers participated in the beautification effort to clean up the George Main elementary school and also prep the Alviso community garden. In addition, another team of 50 volunteers participated in beautiful day's better homes project that served the elderly, low-income and disabled property owners by providing a home makeover. Volunteer, 50 volunteers on that day, worked together to clean, repair, repaint, and redesign the landscaping for a home located on grant boulevard in Alviso. Beautiful day is truly an inspiration group of individuals who tirelessly dedicated their time, talent and energy to serve the community. And I want to commend them today for their service to our community. I know that Councilmember Constant also has a few words to add. So Pete.

>> Councilmember Constant: Thank you. I just wanted to say how proud we are as a city that Westgate church not only came up with this wonderful idea, but they reached far beyond the boundaries of their own community and in fact beyond our city, beyond our state, and beyond our country. Because this has become an international effort. And it was all started five years ago by you, and your church goes in district 1. And it just -- it's incredible the impact that you're having. And I just wanted to thank you on above of the city, obviously but more personally for me and my residents I know many of whom who attend your church, thanks. [applause]

>> Thank you for this commendation. I do want to say, sorry, I work in district 1, my office is there, and I live in district 7 and I'm friends with most of y'all on Facebook, the rest of the council. But what I really appreciate is that there is a synergy of compassion that's happening in our city at large that is reaching the margins of our community. It's reaching those that are lost and those that need encouragement and support and someone that needs to come alongside them. So I just -- I stand before you as more the face of the organization. But there are literally thousands of people that say, I want to help, I want to work together, I want to collaborate, because they want to see San José continue to be a great city. So with that, I accept this award and I thank you, mayor and city

council for that. And for my -- one of the co-leads, Brent Falder, who was instrumental in helping the Alviso project happen. Thank you very much. [applause]

>> Mayor Reed: I'd like to invite Councilmember Nguyen, Julie Edmonds Myers from the parks and recreation department and representatives of the happy hollow foundation to join us at the podium. We are pleased to be joined by the Happy Hollow Foundation. They have been working to raise money to support the puppet theater at the happy hollow park and zoo and they have some news to report that I hope Councilmember Nguyen will share with us.

>> Councilmember Nguyen: Thank you, Mayor Reed. It's not every day that the City of San José receives a check from a foundation. It's usually the other way round. So I'm really delighted to be here today as the City accepts a donation from the Happy Hollow Foundation. Here with us today to present the check are Happy Hollow Executive Director Heather Leonard and board members Matt Mendezabo, John Teng and Patrick Coleman. Let me just provide a brief account of how this donation came about. In 2007 the happy hollow board nominated its ailing puppet theater to be one of the recipients of the Mercury News wish book campaign and as a response to this nomination, readers of the Mercury News responded generously with a gift of \$92,000 for the foundation. I'd like to express our appreciation. Few remaining pickup it play houses so this generous donation will not only provide entertainment for families but also preserve a piece of our history. The holiday season is fast approaching and it is through these generous donation and contributions that this truly reminds -- reminds us this is a season of giving. new memories as we enjoy the park's new facility. So I hope that all of you will come out and join us again on March 1, 2010. I think -- we now have a very small present to present to the City of San José.

>> So on behalf of the happy hollow foundation and the make a wish foundation I'd like to present this \$92,000 check on behalf of further renovation of my favorite venue, one of my favorite venues, the puppet theater at the happy hollow park and zoo. And we hope to present many other donations as we near our 50th anniversary in the year 2011. So thank you. [applause]

>> Mayor Reed: Well, we look forward to you visiting again, with many more checks.

>> We hope so.

>> Mayor Reed: Thank you very much. We appreciate it. Next I'd like to invite Carl Guardino from the Silicon Valley Leadership Group and Chris Landis from Aquina Solar to join me at the podium as we present the mayor's cup trophy from the applied materials Silicon Valley turkey trot which took place over Thanksgiving. Now, as it turns out the mayor of San José was out of town on Thanksgiving day. I was visiting my grandson. But nevertheless, the City of San José put on a great show. Thank you for joining us, Carl.

>> On behalf of the Silicon Valley leadership group and our titled sponsor, applied materials, we are proud to present to the mayor, the council, and the City Manager's and staff, the 2009 Aquina solar Silicon Valley turkey trot mayor's cup challenge championship trophy. [applause]

>> And mayor, we know that you were out of town with grandchildren and a great reason to be out of town but we heard you ran a marathon that morning.

>> Mayor Reed: You heard wrong. It was a bike ride.

>> But we do want to thank councilmembers who did come, councilmember Sam Liccardo, councilmember Nancy Pyle, Councilmember Nora Campos and councilmember Pierluigi Oliverio for personally joining us. We know the rest of you were with us in spirit. Next year, we need you in the flesh, so you can continue to win the mayor's cup. You are two for two. Sunnyvale said to deliver a message, don't get cocky. I'll turn it over to Chris Landis, our representative from Aquina solar, the title sponsor of the Mayor's Cup, while also recognizing Peter Skinner, our senior transportation director. All forms of transport, including walking and jogging, fall under his category. We also have hats for all of you, if that is allowed under city of San José, we're not sure. But we have turkey trot hats for all of you that look very stylish in your business suits on the podium, I might add. With that mayor I'd turn it over to Chris.

>> We brought the hats because you can wear a hat, you can't wear a trophy. I was born and raised in San José and it's a real honor to be able to come home from college, Chico State, to be exact and work in this community. And Mayor Reed and the City of San José has continued to grow, in the Santa Clara County, proving with leadership and forward-thinking progress, Mayor Reed recently went solar, coincidentally with Aquina Solar, and this green movement and the continuing leadership is going to help grow Santa Clara and the state of California. So with this leadership, the mayor's cup once again returns to San José. And we look forward to future participation in the Silicon Valley turkey trot and the mayor's cup challenge. Thank you, Mayor Reed and councilmembers. [applause]

>> And for everyone here, mark your calendars for Thursday, November 25th, for the sixth annual turkey trot. Not only does it start the holiday in a fun and healthy way, but let's mention in this economy collectively what we were able to do, nearly 11,000 community members came out to walk or run the turkey trot. And not all the dollars have been counted yet but we think we can vulnerable families in our valley. Second harvest food bank, the children's health initiative and the housing trust of Santa Clara County. It's a great opportunity to shed a few pounds and to help others in the process.

>> Mayor Reed: Thank you. So it's also a great place to relieve your guilt about how much you're going to eat on Thanksgiving day, at no extra charge. We will now take up the consent calendar. Councilmember Pyle you wanted to pull off 2.1.

>> Councilmember Pyle: That is correct.

>> Mayor Reed: Any others come off for discussion? Motion to approve the balance of the consent calendar. All in favor, opposed, none opposed, that's approved. Councilmember Pyle.

>> Councilmember Pyle: My original memo reads prior to beginning negotiation to change retirement benefits, et cetera, and the minutes read, "direct staff to start negotiations to change." If we could just get it back to the original wording, that would be terrific. I'd like staff to provide the information requested about different strategies for a two-tier system and the cost savings. Under action 3, regarding full funding of retirement accounts, I'd like to clarify that this information will be presented to council at the earliest convenience and then on number 7, this may have to have some alterations, we did discuss this with City Manager Figone and she may want to make some comments on that as well. Regarding comments made to bargaining under during negotiations, we are in the process of doing that. Manager Figone if you wanted to go from there?

>> City Manager Figone: Thank you, councilmember and I've asked Alex also to ensure that I am complete in my comments. I think the primary concern right now is that the statement prior to negotiations, we would present to council on two-tier and as the council is aware we're in the midst of negotiations. And so actually, the education process is something that we really agree to. This is what happened during retiree health care benefits discussion. I just want council to understand that the processes are going on in parallel. So we are actually negotiating with our bargaining units with two-tier on the table. And so the -- having the discussion prior to the negotiation process really isn't practical. And Alex, I don't know if you want to add to that.

>> Alex Gurza: Yes, good afternoon, Alex Gurza director of employee relations. Our understanding of the direction was, there was some merging of the two memos, Councilmember Pyle, your memo and also the mayor's memo. And we actually took them as mutual direction. Because by the time November 5th meeting came, we had already had a second tier and have a second tier on the table for example with the firefighters union. We are in negotiations with the building inspectors and the contract recently expired. So clearly we will be coming back to the council with public information about a second tier about the cost savings but at the same time still doing the bargaining as the negotiations unfold. So we're kind of doing that on parallel tracks. I also wanted to take a moment to clarify also one thing, Councilmember Pyle, one of the things in your memo you had asked several questions related to the funding of retirement accounts. And during the November 5th meeting there was additional questions asked by the council, Councilmember Liccardo for example asked to come back on several questions. We did put out an info memo on answering those questions. However, if the council believe that those questions were not fully answered we'd be happy to do additional follow-up on those questions.

>> Councilmember Pyle: Thank you.

>> City Manager Figone: So in essence, Alex, I think we're achieving as you said the integration of both memos, and the information Councilmember Pyle is calling for will be coming forward but likely with negotiations already in progress.

>> Alex Gurza: Yes, absolutely.

>> Mayor Reed: All right, Councilmember Pyle you want to move to approve?

>> Councilmember Pyle: Move to approve.

>> Mayor Reed: 2.one.

>> Second.

>> Mayor Reed: All in favor, opposed, none opposed, that's approved. I have one request to speak, David Wahl and 2.14, is storm drainage sewage treatment plant study .

>> David Wall: Good afternoon, good to see you all in good health. I understand, this has to be done. My concerns are that it should be done in a more frequent manner. And not away it has been done. Two, I'm very concerned that staff does not have the expertise to do this. In my opinion, this should be something they should be able to do as the course and scope of their employment. Obviously, I have very big questions about this envision 2040 task force, trying to plan something out to when I'll be 85 years old. Needless to say, it has to be done, and all fees or all building projects should be contingent to this fee study. As further testimony in today's proceeding will show, thank you.

>> Mayor Reed: Thank you. Anybody wish to reconsider item 2.14? No, then the consent calendar is approved. As modified here, taking us to item 3.1, report of the City Manager.

>> City Manager Figone: Thank you, good news report, we will be on holiday furlough, I would like to note that for the record and for any viewers who are watching. City Hall and most city office will be closed for the holiday furlough starting next Wednesday, December 23rd. During this time obviously all emergency responders will be working. However, City Libraries and community centers will be operating on reduced schedules. So residents should check with their local branch library or community center to determine whether they are open. City offices will reopen on Monday, January the 4th, thank you.

>> Mayor Reed: Next item is 3.4, that is the Mayor's 2009 biennial review of ethics ordinances. That's my item I will explain what it is we're doing here. First in preparation of this meeting I need to disclose that my staff spoke with Bob Brownstein and Patricia Gardner, who represent nonprofit organizations, and Neil Struthers, as well, I talked to Neil myself. The biennial ethics review is biennial because it happens every two years. It is required by our charter that the mayor conduct this review. I'm supposed to according to the charter, look at our codes, our ordinances, regarding ethics, and I shall make recommendations to the city council for any recommendations for amendments or changes to the code of ethics and the owners which I have done. In addition, our sunshine resolution requires the mayor to review our sunshine rules during the biennial ethics review process. So that is included in the memorandums that I have done. I started this process in a way that's different than the way other mayors have done it. April 29th, I asked, by memo to councilmembers, for them to submit ideas of things that should be considered during this ethics review. On June 24th, we had a public community meeting on ethics and open government to take input from anybody who cared to give it. October 13th, I held a panel discussion of people that I selected because they were interested in ethics and I thought might have some reason to give us some good comments or criticism. And those people came for a one-time job, sometimes it's hard to get people to commit more than one time but if you promise them only once you can get some pretty good people. We did. We had former councilmembers, former elections commissioners, a former city attorney, a District Attorney's Office representative, some nonprofit leaders, and former members of city boards and commissions who came down to offer their perspective on the ethics issues that might be facing our city. But this was a one time group to advise me in preparation for my biennial ethics review. What I wanted was people who would be willing to speak, would be thoughtful, who wouldn't hesitate to say something critical of us if it was appropriate. We had a good

discussion and I got some very good input. But it was an advisory to me, it is not a task force, it's not a standing body, and it wasn't to make recommendations. November 24th, I published my first memorandum with my recommendations. On December 4th, I had a supplemental memo to add an additional item and to change some language. Of course we've had considerable discussion and debate on this even before we got to the council meeting. So yesterday, I published and amended and restated memo with all my recommendations. Because it's awfully tough to track these across multiple memos. The memo I published yesterday reflects all the changes that I'm recommending after hearing from the public as well as taking the comments of councilmembers. What I'd like to do is go through those one by one, explaining what I'm recommending, and then take public testimony on anything people wish to speak on. Come back to the council for debate discussion, voting on them one by one. I think we go down the list and have that conversation, and do them one at a time. The first one is avoiding conflicts of interest arising from family relationships. I've recommended that the City Attorney publish memorandums and do some explaining of the kind of relationships that we might have as elected officials that might require us to abstain or might not require us to abstain. Over the years, now nine years on the city council, I've seen multiple councilmembers who have family relationships with people that are somehow involved in city business one way or the other. Sometimes, they're required to abstain, sometimes not. And -- but I will say that in all those years I've never seen anybody vote on something that they shouldn't have. That that's not the issue. The issue is the public perception or the public mystery as to when you have to abstain and when you don't abstain. One thing I've discovered is the public certainly is not usually aware of our charter provision that tells us that we have to vote on an item, unless we have a legal conflict of interest. Lots of other legislative bodies, people can abstain for whatever reason they want. And that is not the case with us. So we are sometimes placed in a position of having to vote on something even though we have a family member that's somehow affected from it. The City Attorney in his office always does a thorough job of dissecting the conflict of interest and will advise us if there's a legal conflict of interest that allows us and requires us to abstain, but it is not always apparent to the public how that happened. What I'm proposing is that we try get all the rules out in a public way, so that people can understand the rules that we are operating under, that it's not enough for the City Attorney to give us private advice, whether either orally or by memo because the public doesn't really have a chance to understand when we can vote, and when we shouldn't. So that's not a -- recommended for a change in any policy. What I am recommending in the way of a policy change is to require disclosure of family relationships so the public is aware of it. And I'm recommending that that apply not just to councilmembers but for city officials which, under our code, includes the mayor, members of council, appointees, staff members, redevelopment agency board members, Planning Commissioners, appeals hearing board, civil service commission, city representatives of joint powers authority, City Manager, assistant City Managers, deputy City Managers, executive director of the redevelopment agency, assistants and deputies, city department heads and agency division heads. That's already provided for in our ordinance in terms of the definition of many of our rules around lobbying, call upon this list to determine who can or cannot be -- who has to report lobbying activity. So that's what I'm recommending. The disclosure requirement is the one addition other than asking the City Attorney to clarify the rules in a public way. The second item I'm recommending is to close the loophole in lobbyist disclosure requirements. I'm recommending that the City Attorney draft a change to the lobbying ordinance to narrow the definition for those tax exempt nonprofits 501 C 3s. That are not required to register and comply with our ordinance. I am recommending to refer this to the election commission before we take action, so the elections commission can survey other cities and make recommendation before the council takes action. Other cities do it in different ways and I think we would benefit from getting the experience of other cities. What I'm trying to do with that is to capture advocacy organizations that have nonprofit arms. And I have listed some of those, in the memo that I recognize, just here from being active in our community. What I'm not trying to do is to capture nonprofit, tax exempt nonprofit groups that are engaged in community work, providing services to our community, and the kind of tax exempt organizations most people think of when they think of nonprofits. Now, I've certainly noticed that some people think that I'm only talking about working partnerships and their relationship to South Bay labor. That's a wrong perception. There are many more advocacy groups, big corporations and wealthy individuals that have nonprofits that they control. Such as the home builders association of Northern California, San José Downtown Association, San José Silicon Valley Chamber of Commerce, Santa Clara County association of Realtors, and the Silicon Valley leadership group, all have nonprofit tax-exempt organizations that are affiliated with them. They could under our ordinance focus their lobbying activities through those nonprofits and avoid registrations and disclosure requirements. So I'm recommending this change to make sure that they don't do that. It's also a misperception that we only require lobbyists to register because they make a profit. The ordinance is very clear, that the purpose of the ordinance is to require disclosure of activities in the spirit of open and transparent government, to allow the public to know and better understand the relationship between elected officials, lobbyists and lobbyist clients. That's why I'm

recommending the change. In prepare this over the last few months my staff and I have talked to numerous nonprofit organizations and so I've tried to draft it narrowly to ensure that we don't reach out and overly include the truly tax exempt nonprofits that are not engaged in advocacy. Other cities have done it other ways and that's why I'm recommending that we have the elections commission do a survey. I say the election commission because that is the appropriate body under our municipal code. The elections commission is given the duty and responsibility to make recommendations to the council on ethics regulations and policies, and to monitor compliance with all campaign and ethics ordinances. In fact the elections commission used to be called the ethics commission and we changed it a few years ago because most of its work was around elections and campaign activity. But it does have a broader authority and responsibility. So I think that's the appropriate place to do this review. The third change I'm recommending is to try to get more sunshine for decision making boards and commissions. A simple amendment to require our boards and commissions specifically the appeals hearing board, civil service commission, deferred compensation advisory committee, elections commission, Federated Employees Retirement Board, Police and Fire Retirement Board, independent hearing panel, planning commission and traffics appeals commission to have them have their meetings in City Hall. Each of these commissions perform decision making functions and often make decisions that cannot be appealed to the city council and I think their meetings should be held here in the people's place in a public setting that is easy for people to find, easy for people to participate. And that's why I'm making that recommendation. The fourth recommendation I'm making is to avoid policy by surprise at committee meetings. I'm recommending that we identify what is really a best practice. If people are surprised by something that comes up at the last minute before a council committee, that the best practice is to go ahead and discuss it but defer it until the next committee meeting to give not only committee members a chance to understand it but the public as well. So that's a recommendation, you'll note that I've modified that so it doesn't require a committee vote one way or the other. I just think we ought to identify it as the best practice as a courtesy to committee members and a courtesy to the public, so that there's ample public debate on those. We have a rule now that requires multiple signature memos from councilmembers to be published at least four days before a meeting and we do that to give the public a better chance to find out proposals and participate in the debate. But what I'm proposing would apply to committees as really a definition of the best practice. Item number 5 is to recommend some process improvements for revolving door employment restriction waivers. As of now, when employees leave the employment of the city, there are restrictions who they can go to work for and how long that is. We created those restrictions in order to avoid some potential problems with people lining up jobs while they're still on the city payroll. We are in very difficult times and due to budget shortfalls we've been laying people off. They're not quitting, they're being laid off due to budget constraints. What I'm recommending is that we simplify the process for people to get in front of the city council to request the waiver that's already permitted under the existing rules. I'm not recommending we change the standards but just to make it a simple way for people who want to have the council consider a waiver, to do it. Item number 6 is to improve timely disclosure of calendars. We have existing requirements that calendars be posted on a weekly basis. Our review of that is compliance is spotty and I think having a regular look at it and a public discussion at the Rules and Open Government Committee would improve compliance. And I think that's a very simple way to get a better record of complying. Number 7 is to protect the public participation at council hearings. And you'll note I have an amended recommendation there that deals with how we handle matters under orders of the day, which is when we set our agenda. It has been our practice of not having debates under orders of the day, because that takes things way out of order and people who are planning to come to a meeting may not even be here and it's just better to handle it on the agenda as regularly set. But if the council does decide to have a debate under orders of the day for whatever reason then I'm proposing that the public could offer testimony during that debate. Number 8 is limitations on anonymous complaints to the elections commission. This is a referral from the elections commission to limit anonymous complaints. When it came to us, the elections commission was recommending that a tip line could be used for good cause for anonymous complaints. I thought that good cause ought to be defined. I've suggested and recommended a couple of times when good cause would be found. When a city or an agency employee who's not protected by civil service system needs to issue a complaint about a supervisor in their chain of command or when a private sector employee needs to issue a complaint about their employer. There may be and probably well are other instances in which true whistle blower protection is necessary for somebody who wants to complain about a particular action that seems to be in violation of our ordinances. I think we should refer that question back to the elections commission to add to the list of good cause, the definition of good cause, but I am recommending that we go ahead and accept the rest of the recollections from the elections commission on anonymous complaints that we specify the whistle blower protection that I've outlined and asked the election commission to consider other items that should be good cause for anonymous complaints to the tip line. I would note that people

-- there are other opportunities for people to make complaints anonymously. This isn't the only way that can be done. There is the District Attorney, the political practice commission, and certainly the local media are happy to get complaints from all kinds of sources. And in addition, people can certainly talk to the City Clerk or City Attorney about concerns they have that they don't necessarily want to raise publicly and the City Attorney and City Clerk have been very good to bringing it to the attention of people and getting changes in behavior. Number 9 and the last on my list is to make interest arbitration hearings open to the public. And to, what I'm recommending is that we direct the City Attorney to conduct a legal analysis of that requirement, so we can consider adding it to our sunshine ordinance to ensure that arbitration, interest arbitration, that's police and fire contracts are held in public and to take a look at the Brown Act and our own sunshine provisions as to how they might apply to that. That legal analysis should be sent to the elections commission for a recommendation before this comes back to the council. I might note that these arbitrations take place involve a lot of taxpayer dollars. An unlimited power goes to an arbitrator under these arbitration provisions. To pay, benefits, operational issues, all of which could have a significant impact on the city. We get into these arbitrations after negotiations have failed, and we are unable to agree with police and fire union on what a contract should be, and this board of arbitrators that's created has enormous power. It pulls hearings that are essentially a trial, witnesses, cross-examination, experts, evidence, data, it's just like Superior Court except it's not held in superior court, and it's not a judge. I think these arbitrations ought to be open to the public, tremendous public interest in what gets done there. That's why I'm making this recommendation. But I understand there are potentially legal issues with that, the Brown Act may require them to be open, our own sunshine rules may require them to be open, and I think the city attorney's legal analysis would be helpful to get that to the elections commission before they make a recommendation to us. So with that those are my recommendations. What I'd like to do is give the public a chance to comment on any or all of these. And then bring it back to the council for discussion. I do have some requests from the public to speak. And we'll take those now. Ben Field. Mark Skeen, Schuyler Porras.

>> Mr. Mayor, members of the council. The city council needs an advisory body that is well equipped to evaluate ethics reform proposals, that is neutral and perceived as neutral. The memo by Councilmember Kalra, Chu in order to avoid the appearance of political bias, both memos propose that the advisory body should exclude sitting elected officials. The question then is whether the ethics panel or the elections commission ought to advise the council on ethics. Both bodies serve important roles in the city but the ethics panel is the better forum for the consideration of ethics reform. The ethics panel was formed to compose that role and the members of the ethics panel have some experience wrestling with the ethics issues raised by the ethics items raised on the agenda today. Proposals that are before you today taking that role away from them and giving it to the elections commission would create the appearance of forum shopping and raise again the concern that political considerations are influencing ethics reform. If the council's goal today is to depoliticize ethics reform you ought to send the ethics proposals to the ethics panel to be fully debated, and the ethics panel should be tasked with reporting its findings and recommendations to the council. Thank you.

>> Mayor Reed: Mark Skeen, Schuyler Porras, Joshua Bruce.

>> Mark Skeen, executive vice president, San José firefighters. I'm here to speak on the arbitration portion of the ethics owners. Speaking in favor, I think they should be open. If it helps Mr. Doyle, it's helped throughout the state in the I think that all public -- excuse me all private contracts need to be under the same scrutiny as you're putting us through on this. That's all I have to say this afternoon. Happy holidays to all of you. Hope you have a great holiday with your families. Thank you.

>> Mayor Reed: Schuyler Porras, Joshua Bruce, Bob Brownstein.

>> Mayor Reed, members of the council. Thank you for the opportunity to speak on this matter. As someone with a particularly strong interest in transparency I do however have two principal points of concern which I would like to address this afternoon. The first is the so-called policy by surprise proposal which as drafted is overly broad and runs the risk of the ability of councilmembers to be responsive to feedback from community members during meetings. I second point of concern is more fundamental to the legitimacy of mindful of the importance of independence, when it comes to oversight mechanisms, I believe it's important to note that the current design of the ethics review which includes the city mayor inherently lacks the independence needed to city to take whatever steps needed to modify any and all ethics review processes so that current members of the city council will not be included in the reviewing body. Thank you for your time.

>> Mayor Reed: Joshua Bruce, Bob Brownstein, Richard Hobbs.

>> Good afternoon, honorable mayor and esteemed council. My name is Josh Bruck, proud member of council district 8 in San José. First would like to thank you for your tireless dedication to the city. Like you, I don't think there is any more gratifying than strengthening through public service, ethics review for our city however due to the mayor's, the right to speech and being challenged. Rather history has proven that in repressive times the right for the protection of the public good. I believe that a number of the mayor's proposed reforms would ultimately serve to erode the milk' right to free speech so I humbly ask councilmember Kalra and co-signed by councilmembers Pyle and Chu, to ensure ethics review for our city. As we are well aware we are in order to effectively solve some of our city's biggest challenges we need to work collectively and brush aside partisanship and campaign retribution. thank you so very much for your time and happy holidays.

>> Mayor Reed: Bob Brownstein, Richard Hobbs, Betsy Arroyo.

>> Bob Brownstein: Since this agenda item is about ethics, I thought I'd comment about my own values. I concur with the following statement. Men have come to understand that the ultimate good is better reached by free trade in ideas. That the best test of truth is the power of thought, to get itself accepted in the competition of the marketplace. That is the theory of our constitution. It is an experiment, as all life is an experiment. But while that experiment is part of our system, I think we should be eternally vigilant against attempts to check the expression of opinions that we loath. Those are the words of justice Oliver Wendell Holmes almost a century ago. They are clearly relevant in San José today. For 30 years in this city I have entered the competition of ideas, often forcefully, challenging city council members, mayors, county supervisors, innumerable administrative officials and some private interests. I challenged them based on the strength of my proposals and the validity of the research that I do. I do not seek to check the expression of those with whom I disagree. I don't demand that they pay fees in order to speak. I don't demand that they navigate bureaucratic labyrinths in order to speak and I would never concoct definitions of lobbyists that apply only to them. I respect the rights of others to free expression, because I've learned the ideas I find most irritating may contain elements of wisdom. And also, because I understand history. Efforts by those in power to check the expression of the opinions of their critics always start small. The fee to register as a lobbyist isn't debilitating. But they never end small. They never end small. And that is why that is a path which no one who believes in free expression should even begin to tread down. Thank you.

>> Mayor Reed: Richard Hobbs, Betsy arroyo, followed by Jonathan carp.

>> Good afternoon, mayor and city council, my name is Richard Hobbs. I am here representing Services Immigrant Rights and Education Network, SIREN, which is a 501C3. By way of disclosure I have worked with immigrants for 30 years in San José and Santa Clara County. Siren has two concerns of these nine. The first is prohibiting anonymous written complaints people from Vietnam and China fear reporting anything to the government based upon their past history. I wrote a 600 page master's thesis about corruption in Mexico, not only in places like Mexico but India and Philippines. Those people fear government and they fear providing a complaint in their nameto to government. San José is 40% immigrant. I'm really concerned that this is going to dampen the ability to complain when they have something to complain. The second thing I'd like to address is issue number 2, closing a loophole in lobbyist registration and disclosure. The definition of control that you have made public is an empire contradiction to the internal revenue code. A, B or C describes the appointment or selection of members to the board of directors. When the I.RS code clearly says a majority, not a member but a majority. B, says the same person who are manages or directs, this is again, in violation of the IRS definition control, on form 990, it's overly broad, under the IRS code. simply on C, assets employees or expenses, this would be in violation of the IRS code. So I urge you to go back and review the IRS code in terms of the definition of control. I think you're going to have some severe issues, not in terms of a legal can of worms but a practical can of worms.

>> Mayor Reed: Sorry your time is up.

>> Because you're going to have to decide who is on which board. Thank you.

>> Mayor Reed: Betsy Arroyo, Jonathan Carp, Robert Lindley.

>> Good afternoon, I'm Betsy Arroyo. I'm District 6 constituent and active in politics and affordable housing debate keeps government honest. In order for that debate to take place, people must feel free to voice disagreement with government without fear of retribution. The mayor's proposal are the office open government. We have -- but the strong message sent by the mayor's proposal is, don't publicly question the powers that be. Unless you want to be singled out for political retribution. The mayor's proposal do not hurt just those singled out for reprisal. They hurt us all. They stifle accident and chill public debate. It's hard enough for ordinary citizens to navigate the complex government system of committee meetings, council meetings, long daytime meetings, confusing agendas to come to speak. The hint of being singled out for retribution will squelch all efforts and participate in our government. I urge you to support councilmembers Kalra, Pyle and Chu's memo which will restore the integrity to our city's ethic reforms. Thank you.

>> Mayor Reed: Jonathan Carp, Robert Lindley, Claudia Shope.

>> Mayor and members of the council, I'm Robert Lindley. I'm president of the Santa Clara federation of union members, and I'm speaking in favor of the Reed referral proposed by Councilmember Pyle and co-signed by two other members of the council. We have a history on this continent, going back four centuries, almost, of town meetings, where citizens can freely come and express their opinions. And even prior to that, indigenous people of this continent had a tradition of council discussions in their governance. I think it's very important to have a free and open discussion, have the council, as the legislative body, have the input of as many citizens as possible. I'm also particularly concerned about the designation of 501(c)3 organizations. I think the internal revenue code provides very severe limitations for the qualification of these organizations. And at the council imposing additional restrictions as a previous person pointed out, could be in conflict with those regulations and is in fact in my opinion entirely unnecessary. Thank you very much for your consideration.

>> Mayor Reed: Claudia Shope, Bill Guthrie, Sandy Perry.

>> I'm Claudia Shope. I'm here today I'm involved in a lot of community activist activities, and lots of different groups, democratic party and forum and such. Ethics needs not to be used as a smoke screen to silence the public. That is what Mayor Reed's suggestions smack of to me. It's a way to keep people quiet, it's a way to delay and defer, rather than take what the public has to say right at that moment. I urge you to return this to the ethics committee without people who are political people such as the mayor sitting on it. It needs to be a collaborative opportunity for the public to discuss things, and the city council needs to be able to take the considerations that the public makes, and act on them. And this -- many of the things in this just don't do that. And I also think that it's a shame to single out certain people and certain organizations, which even if you're saying that it's not being done, appears to me is being done. Thank you.

>> Mayor Reed: Bill Guthrie, Sandy Perry, Jeremy Veruse.

>> Honorable members of the council, my name is Bill Guthrie, I'm both an elected member of the unions and a resident of downtown San José in Councilmember Liccardo's district. First I want to say the mayor has long been an advocate of fair and ethical government, part of his lat form for running as mayor of the city. Seeking a high standard of ethics for all serving in the public interest. My concerns are over the proposed language what the implication are to the integrity of the review process and the openness of our city. As was stated in yesterday's Mercury News whether intentional or otherwise, political retribution than closing loopholes in our political process. Within our citizenry, within the council itself, contention disagreements and how our city should move forward on particular issues. For all we should not sacrifice public debate free speech or our democracy for for the public good. That is exactly what I believe the proposals would do in their current form. And their passage would ultimately be a detriment to our city. I ask you to please reconsider the proposals. No one is against improving the ethical civil liberties for political expediency or as a means of silencing the opposition. Thank you very much for your time.

>> Mayor Reed: Sandy Perry, Jeremy Bruce and Clark Williams.

>> Good afternoon, mayor and councilmembers. I've been associated with working partnerships U.S.A. for almost ten years through the interfaith council on economics and justice. As you're probably aware one of the mayor's proposals at least certainly appeared to target working partnerships. And frankly, I've had a little bit of a hard

timekeeping up with things because there's been a lot of revisions. And particularly it appeared to target his opponent in the last election. But during the time I've been involved with interfaith council our work has been to support better conditions for hotel workers, janitors, supermarket workers and airport service workers. As I recall, one airport service workers's wages were so low, prior to the campaign he was homeless while working 40 hours a week. We've also been active supporting affordable housing, immigration reform and health care reform. All of these causes are of great public benefit to the residents of the City of San José. The interfaith council because it's comprised of religious leaders has never taken a position or participated in a political election campaign. The mayor's proposal would unfairly, in my view, require our director who's reverend Rebecca Keiken and a working partnerships employee to register as a lobbyist and comply with burdensome reporting requirements. And I believe the material, moral and spiritual benefits of our work are incalculable, and that -- and that these efforts to interfere with them will only result in more unnecessary suffering for the city's poorest and lowest paid workers. So I would recommend that these be returned to the ethics panel for further development. Thank you.

>> Mayor Reed: Jeremy Bruce, Clark Williams, Timon Norimoto.

>> Good afternoon, Mayor Reed and the entire city council. My name is Jeremy Bruce and I'm a resident of council District 8. I'm here today to strongly urge you to accept Councilmember Kalra's memo to ensure that policy making here at City Hall continues to be fair and imbalanced with fair and equal contribution for all members of the community no matter what agency they represent. We are heading into the new year with great challenges facing the city and it is important for new policy and making decisions for the better of the city not silencing political opponents. Furthermore I strongly urge the council to adopt Kalra's memo recommendation and refer the items in sections 2, 8 and 9 of the mayor's memo to the biennial ethics review panel. This group is more diverse and better suited to explore public policy with the wide range of experience on the panel while the elections commission, the board that the mayor's memo recommends is merely a narrowly selected panel with the expertise in a smaller range. So we as a community move forward, let's utilize our valuable resources from the nonprofit sector not silence them, we can continue to create jobs, develop respectable city services to employ the quality of life for the wonderful people of San José. Thank you.

>> Mayor Reed: Clark Williams, Timon Norimoto, Fred Hirsh.

>> Thank you, mayor Reed, happy holidays to all of you and members of the council. I appreciate, improving transparency and accountability in our city government. The Sunshine Reform Task Force recommendations passed by the council are truly making a difference in restoring the public's confidence in our local government. Yet I believe even more needs to be done. biennial ethics review panel but my concern is that these ideas won't be vetted thoroughly within a proper ethical framework. Only through a careful and deliberative review can an appropriate series of approaches be developed that would do the most good do the least harm, treat all people and organizations equally and best serve the community as a whole. I have long shared the perspectives of Mayor Reed and the Mercury News on ethics reform. Appearances do matter. The last thing we need in San José is a politicized ethics reform process. That's why I think that the biennial ethics review panel is best positioned to more broadly gather the independent insights of a broad network of community leaders and groups that are most impacted by these reform proposals and to suggestion reforms that can be implemented with the greatest care and attention to all stakeholders in San José. Thank you again mayor for your attention to good government and for the opportunity to speak.

>> Mayor Reed: Timon Norimoto, Fred Hirsh and James Zarutka.

>> Good afternoon, mayor and council, my name is Timon norimoto number 8, in English we have a saying, the squeaky wheel gets the grease and that means in a positive way that you should speak up and therefore you get attention. However, in the Japanese culture we have a saying that says, if you stick your -- if the nail that sticks its head out gets the hammer. This means that you should not make a complaint, you should just fall in line. The point that I'm trying to make is that number 8 would have a chilling effect on our communities that fear confrontation. Coming to the United States in recent history while allowing anonymous complaints would leave a door open for abuse, we should not, we must not close the only door that some members in our community feel comfortable to take. Consider and thinking about as an item taking into account the diversity and cultures we're have in San José and not create barriers that limit participation. Thank you.

>> Mayor Reed: Fred Hirsh, James Zarutka, John Larson.

>> Good evening, members of the council, mayor Reed, my name is Fred Hirsh. Member of local 393 i'm not really prepared to address this issue in the kind of detail that it needs, but I do know that there is no ethical way, no moral way, and no democratic way, to attempt to squelch free speech. As a young boy, I came to admire one of my first heroes, Tom Payne. I think he set the pattern of free speech, and made it stick through several centuries. I still respect that attitude more than any other. I think there's nothing honest or honorable in playing petty politics with matters of freedom of speech. I urge you to support the proposal put forward by councilmembers Kalra, Chu, and Pyle. And there is a question that is asked in our national anthem about whether that flag still flies over the land of the free and the home of the brave. Please don't make it less free, and make it more necessary to be brave to speak freely. Thank you.

>> Mayor Reed: James Zarutka, Eric Larson.

>> Good afternoon, Mr. Mayor, members of the council, James Zarodka with the law foundation of Silicon Valley. We are very strong proponents of transparency and it's clear that the mayor and the authors of the December 11th memo share those values as the rest of the council does of course as well. The perception that's out there now though is that regardless of the truth of this, the perception of this is this is now a very politically motivated process. Anything that accommodation out of this that does not get some outside review is going to be inevitably tainted in the public's mind. So it's essential that this go out to some outside advisory boards. And it's good to see both memos advocating that. Well, of course each memo advocates for a particular board. It seems to me to send it to both. We get more advice from people for example the members of the ethics review panel, like Emmett Carson and Judy Gallo, like the sunshine task force, if it needs to be formalized in some way. That expertise so the council could create that task force as something that is not just ad hoc but it is something more formalized. The council can and should do that if that's necessary. More advice and more community input can only be good at this point. Our work relies on whistle blowers being able to come forward with their concerns without fear of retaliation. The December 4th memo points out astutely there are many other examples of retaliation than there are set forth in the mayor's memo. We go urge the adoption of the December 4th memo or refer to these outside panels for their review if the mayor is not prepared to move forward with the recommendations in the December 4th memo. I thank you for your consideration of this matter.

>> Mayor Reed: Eric Larsen. That's the last card I have. please get your cards in.

>> Hi, Eric Larsen, chief steward of the MEF chapter of AFSCME local 101. And I want to say that the city charter says that city officers and I quote, city officers and employees must be independent, impartial and responsible in the performance of their duties. Unfortunately, the mayor's proposals do not appear to be impartial. A number of them appear to be attacks on his political adversaries. Refer these complex issues to a panel of ethics experts will bring about the best policy. You know, the Mercury News editorial highlighted the problem with the appearance of politicization of the ethics process. So I ask you to, and I urge you to support the memo by councilmembers Kalra, Chu and Pyle. And let's stop this putting politics into this ethics issue. Thanks.

>> Mayor Reed: That concludes the public testimony on this item. I'd like to bring it back for council discussion and I think it would be better if we took up each item separately, discussed it, voted on it because there's nine of them, it gets complicated to talk about all nine of them at the same time. So Councilmember Liccardo.

>> Councilmember Liccardo: Thanks Mayor. With regard to item number 1, I'd like to make a motion to improve the recommendation as stated in the most recent memorandum, December 14th. Offer explanation, in my own circumstance, I know at least on one or two occasions, Lake and Don Imwalle was involved in a development issue and I was told by the City Attorney that the charter requires me to vote. And I had questions from the public, why are you voting on something that involves a cousin of yours. Well, that's what the law requires. And it seems to me having clarification around these issues and public clarification would be helpful.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Kalra: Thank you, mayor. I agree for pretty much the same reasons that Sam just outlined. I think it's important. This number 1 really is about education, educating the public, by putting out a document from

the city attorney's office, that clearly explains the rules that we must follow, even if they're uncomfortable like it was for Sam and I'm sure it has been for other people at other times. And it's important that they really understand why you take the actions that you need to take. And I think the portions of this that discuss disclosure, we should never be afraid of too much disclosure. I know many times, we've heard us up here talking, saying I don't know if I have to disclose this but, and I think whenever there's anything that should -- if you even have a hint that it might need to be disclosed you should disclose it. Because it only takes a couple of seconds, and it's really the right thing to do. I don't personally think that this is in any way politically motivated on your behalf, mayor. I think that it really is this, along with the others are thoughtful policy recommendations based on the experiences of what we've seen here, as a policy making body. I think if you look at this one particular issue, it's much like why we have the nepotism policy amongst our city staff members. It's the same type of thing. It's about not actual conflicts but perceived conflicts, because we don't have the ability as Sam pointed out to get out of the perceived conflicts. It's important that we just disclose and educate. So I urge all my colleagues to support this because it truly is the right thing for us to do.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. Since we're taking one item at a time and I think you said that we're going to discuss and vote on one item at a time, is that correct?

>> Mayor Reed: I think that's -- well that's my recommendation. It's ultimately up to the council but I think that's the easiest way to get through it.

>> Councilmember Campos: Thank you. I want to disclose for the purpose of the whole discussion today, that I had a discussion with Cindy Chavez from the South Bay Labor Council, Neil Struthers, who is my husband, from the building trades, Ben Field from the South Bay Labor Council, and Patricia Gardner. And first, I'd like to thank the speakers that came before us for voicing your concerns and your thoughts and for being bold enough to point out what is not right with the mayor's ethics review, biennial ethics review, not saying that this all falls on him, because he did state that there were a lot of other inputs, but he ultimately put the memo together. Now I'm going to follow, and hopefully, my comments are well received or at least taken into consideration as we have the discussion on the first item. As I disclosed, my husband, Neil Struthers, is an advocate, as well as someone that works in this valley. He oversees contracts that negotiate and bidding processes throughout Santa Clara to ensure that laws are followed, and workers' rights are protected. That means that on any given council agenda, there will be several items where he may or may not be involved, or he may or may not advocate speaking out on an item. But unless he discusses that matter with me, or with my staff, I will have no way of knowing whether he is involved on a particular item or not. When I looked at today's council agenda, I saw over -- about ten items where my husband may or may not have been involved. I would have had to have pulled seven of those items because he would have not have had a discussion with me, to inform me if he had been involved in those particular items on the council agenda. I have always disclosed with the advice of counsel, City Attorney counsel if I thought that I may have had a conflict of interest. I have taken several votes in the past six years on things that I may have thought that there was a conflict of interest. But per the direction of the City Attorney, there have been no, and let me repeat, no legal conflict of interest on any vote that I have taken. And so what I ask the City Attorney earlier today, was how would recommendation number 1 apply if the provision that says that we have to disclose every item that my husband may or may not be involved in without my advice, without my knowledge. And City Attorney, I think it's appropriate for you to respond to the public on how you answer that with question marks that you may have had, as well, on item number 1, how it would apply to family members.

>> City Attorney Doyle: Well, councilmember and members of the council, I think the two issues that I think I have, and we would have to come back with, if the council directs us to go down this road, is what -- how far down the road do we go with a family member? What is the definition of a family member? Councilmember Liccardo indicated that he had a cousin. I don't know if it's a first cousin, second cousin. So the question really is, when you start talking about familial relationships, how far down the road we go, I don't know what the mayor has, first degree or what, and that is an easy fix, but we just need to get direction. The second issue is, what is meant by involvement. Is it direct involvement, does the family member have a financial interest in the matter? Because as you point out there are situations when a family member is involved. Let me use you as an example. You have a brother who is on the Planning Commission. He is involved in the decision that the Planning Commission makes that comes to the city council. Read broadly enough, you would have to disclose those types of situations and yet

he may not have a financial interest in the matter. So it really is what is meant by involvement. And that would -- those are the two things we would need guidance on to come back with some policy change.

>> Councilmember Campos: Thank you, City Attorney. The other thing is that I have always disclosed items that my husband may have been involved in. Even when we disclose it, I recall several times my colleagues laughing, because I think they probably thought that was kind of silly. But I have had a high standard practice for myself, that whether my husband talks to me or whether he talks to my office, that I need to disclose that. Because that is a policy that we have in the City of San José. And in past, I have gone to the City Attorney, because I thought there might be a perception of a conflict of interest and he has said by legally, rights you have to vote on that matter. Because you are not, and your husband is not receiving a financial interest in that. So I think this recommendation is obviously aimed at my husband and myself, and I don't think it is appropriately -- appropriate to craft policy with one person in mind. Now, having said that, I believe that the two items that were previously number 1 and number 2 under this policy, are appropriate. I think we should have clear understanding, so the public knows what we are voting on. But I also think that we need to narrow what is currently being proposed as the City Attorney stated, some reasons why we could have too broad of a policy. I want the public to also know that I think that crafting a policy that is aimed at somebody that will only be here for ten more months voting on items is not smart policy. I think the public said it very well, that if we're going to craft policy for ethics, that it should be thoughtful, that we shouldn't rush it, and that it should go back to two bodies that can give us more direction. So I'm hoping that as we go through this vote, that the one item would either be referred back to the two bodies, the ethics review panel, or that it would be dropped from this motion as we move forward. Thank you.

>> Mayor Reed: Councilmember Campos, let me respond to a couple of things you said. First, the public needs to know that before we have these meetings, I can't go around and talk to everybody. Under our open government rules, the Brown Act doesn't allow me to talk to everybody. So this is the first time that Councilmember Campos and I have had a conversation about this. And I find your questions about the disclosure part of it worthy of serious consideration. But those are the first time that I've had them raised. And when I gave my opening comments, I did talk about this should be applied to city officials. And I concede that there are other potentially unanswered questions about how you do the disclosure and what the scope of the family relationship is. And it's not just about councilmembers, it does go down the chain of command to assistants and other people who aren't sitting on the dais and who wouldn't be able to disclose it on the record because they wouldn't be here. So my recommendation to disclose it on the record at the time the decision is made probably doesn't work for those people, so I can see that there's certainly some uncertainties on that. And this piece of this, the disclosure part of it would be proper to refer to the elections commission, we do have definitions in the code about immediate family relationships as part of our nepotism policy, part of our place to start but let me speak to this is not about you you are the only person that has perhaps the most obvious family member as you've described it. But during the time I've been part of this council and mayor I can count seven councilmembers, Councilmember Liccardo related one of those experiences and I know that in almost all those cases councilmembers have had some difficulty in figuring out whether or not they should vote, whether or not they should abstain. And I think it's important to get the rules out there. And it is about all of us. Because any one of us could have a family member somehow involved in any given Tuesday. And having the rules out there as I recommended I think would be helpful to all of us. But I do think that we ought to direct this disclosure question to the elections commission for some refining of the details beyond what I've recommended. I'd ask the maker of the motion to do that by friendly amendment.

>> Councilmember Liccardo: I'll accept that friendly amendment.

>> Mayor Reed: And the second member, Councilmember Constant. So that motion then is amended to approve the first section and then send the second section to the elections commission. Further discussion on the motion?

>> Councilmember Liccardo: Just to be clear, mayor, A and B then go forward to the City Attorney, the last paragraph would then be referred to the commission?

>> Mayor Reed: Yes, disclosure.

>> Councilmember Liccardo: Okay, thank you.

>> Mayor Reed: Asking the City Attorney to get the information out there. One section, the disclosure issue is what needs to go to the elections commission, where I recommend the City Attorney to draft the change to the policy requiring disclosure. That last paragraph.

>> Councilmember Liccardo: Right, thank you.

>> Mayor Reed: Would go to the elections commission under the motion. On the motion, Councilmember Pyle.

>> Councilmember Pyle: Mayor, I have some difficulty saying that this should go to the commission. Because this began with the biennial ethics review roof and within which there are some very prestigious members, I think it would make sense for them to continue rather than to bring it to the elections commission. Is there a chance that we could make that substitution?

>> Mayor Reed: No, I wouldn't support that. The biennial ethics review was a one time meeting of a advisory body I put together, it only met once, and that was to have this forum. The elections commission, under the municipal code, is charged with the duties and responsibilities of reviewing and making recommendations to us on ethical issues. I think they're the appropriate place to do it. They can hold whatever meetings and public hearings that they may think are appropriate to do that and they can certainly invite others in to that discussion. So I think that's the appropriate place because that's just the way the ordinance is structured. Councilmember Liccardo. On your motion.

>> Councilmember Liccardo: Yeah, I just wanted to articulate a bit further on that. I know there was some concern about who was on what commission, or committee, or whatever. I wanted to make it clear, the biannual ethics review is those individuals are identified by the mayor. The elections commission is selected by the council. So if -- and I think at the mayor's suggested, the Muni code is pretty clear on this. I just looked it up, it's been a while since I read this. The elections commission's duties are A, and C, make recommendations to the city council with regard to campaign and ethics regulations and policies. So I think at the very least it has to go to the elections commission because that's the way we created the law. And with regard to the review panel, you know, part of my concern is, I look at the list of folks, Emmett Carson, Carol Lee I know they signed up for one meeting. I'm not sure they want to sign up for a mini sunshine commission which is what this very well could become.

>> Mayor Reed: One other thing about the elections commission I forgot to mention they have a broader scope as well because under our sunshine reform measures that the council approved the elections commission has a role in appeal and alternate routes to appeal, open government issues. There's Rules and Open Government Committee and if they want to they can go to the elections commission or come to the council. So elections commission already has a role in open government as well and I forgot to mention that. Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. This is going a little bit differently, I thought we would be discussing how we would refer it after we discussed all of these various issues within it. But as we are talking about it now, I am struck by the fact that there's some -- there's interest I think and rightly so and as it has been expressed by folks who have come here to have the group that originally looked at this which was the mayor's panel and I understand it's not a formal body, who originally looked at it and made recommendations, have them be involved in looking at it again. First of all, before I get to that, I just want to -- I wants to commend the mayor on moving forward ethics and convening the panel, and all of the progress we have made under his leadership. And I think a lot of the policies that are coming forward today, the policy recommendations are important. But away I'm concerned about is the process that we get to make these final recommendations. So I have some concerns about sending it back to this panel, and those are expressed, started to be expressed by Councilmember Liccardo. And that is because, originally, the scope of this I understand was a one-time situation where they were convened to meet, and it looks to me, I looked at the list of those folks, there's about ten of them. So I guess I'm asking Rick, I wanted you to comment, Rick, on what it would take for these to become a more formal group. Because we are looking at -- they would need to come under the Brown Act, they would need to come under sunshine. Obviously we want to be sure that this group is able to perform what we're asking them to perform and if in fact these folks would want to continue. If we wanted them to perform these functions and they could not, what would we -- what would then be our course of action? Because I would not want to see us just ad hoc grab new people to be on the panel because then we're faced with -- we're sort of getting away with what we

wanted to do in the first place is have this same group of people hear this again. So if you could just comment on some of those concerns.

>> City Attorney Doyle: The -- well first of all in my view this is not an existing body, it was a body. The mayor -- the charter establishes the requirement that every two years, the mayor would convene a group of people to advise him on what proposed changes there should be to the ethics ordinances. And then the mayor is charged with coming forward with a recommendation. That's already been gone. So there's no longer this body in existence. There are ten individuals and to answer your question it would be like creating a new body. With these individuals you don't know whether they want to accept appointment or not. There's no program, no staffing in place but that would have to go along with establishing a new body, similar to how the council established the sunshine task force. You are starting anew. You do have an elections commission, there is process, there is staffing. They are charged with enforcing title 12, all the way through gift ordinances and campaign ordinances, they just don't deal with elections, you do have that structure in place. They are appointed by the council and they're not supposed to be political. They can't run for office for two years after they leave their post. So you do have something in place. If you want to start something new you'll have to have us biannual ethics task force no longer exists.

>> Councilmember Herrera: What I see is, we have a group of people that has been -- it's largely agreed by the people who testified that there was a faith in this group of people. They may have been only selected one time but there's an overwhelming selection of the mayor's selection of this group of people. The mayor must have done a great job for selecting them.

>> Mayor Reed: Could I get in there to say thank you for the selection. It seems to me that people do like the group I put together for a biennial election commission and suggest to the elections commission that they may want to invite that group of people in to a hearing or discussion somehow when the elections commission takes that up? That way we have the elections commission between us and the biennial ethics groups without reconstituting and staffing and recreating the whole organization.

>> Mayor Reed: If that's a

>> Councilmember Liccardo: If that's a request for a friendly amendment I'll accept it.

>> Councilmember Herrera: May I suggest having it go to this panel, certainly council has had other panels. We've had people pull together to look at sunshine, we've had people pull together to give us a feedback on various issues that have been set forth by this council. So if we were able to do that and then for some reason they were unwilling to serve, it could not be worked out then as a fall-back position go to the ethics commission, that happens what and then.

>> Mayor Reed: I any that's their job and then they could convene this group without worrying us constitute another organization with another set of work. I think that let's everybody get engaged on it. They can handle the work and seek out the recommendations from the panel members, some of whom may be willing to participate, some of whom may not. But I think that's a reasonable solution. So I would -- if Sam is willing to make that a friendly amendment, I certainly would support it.

>> Councilmember Liccardo: I would support that. There is lots of ways to get people engaged.

>> Mayor Reed: I will note I invited more people than the 10 that made it. You don't ever get everyone to accept. So the motion is modified by friendly amended again councilmember Nguyen.

>> Councilmember Nguyen: Thank you. I actually concur with Councilmember Herrera. And the reason being is that 2010 is going to be a very, very heavy election year. Obviously, we all know that the election commission's going to be charged with unanticipated duties as a result of complaints coming from different political campaigns. So to have this body review, and have extensive or discussions about what we're going to send to them number one it's not going to be the only one nine items and I can already see that there are more than half of the items that we are going to review to another body for review and discussion. So that would be my biggest concern is that we are charging them with so many different responsibilities I'm not sure at the end of the day that

we will get the work and results that we anticipate. So I absolutely agree with Councilmember Herrera that we should send this back to the mayor's biennial ethics review panel. Perhaps ask these individuals to come back and serve and if they decide not to then we should open up and solicit new individuals. And so that would be my thoughts.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. Since we have folks from the elections commission in the audience I'm just wondering, we're discussing things we're going to put for you. Do you feel that's on your workload that you can manage that? I see at least two elections commissioners in the audience. If you can maybe come up and just say, do you feel that's the appropriate workload for you this coming year?

>> Mayor Reed: I think we'll get Fred de funiac to speak. I think you're on behalf of the commission.

>> Good afternoon, Mr. Mayor and city council. I'm Fred de funiac. I'm the chair of the elections commission. I think your question is whether the commission can take on this workload. I would say that the answer is yes. But at this point, we're really waiting for to you make a decision. There are obviously some strong feelings. It is not the commission's point to take sides in this issue. If it is your desire for us to take this on, we will do so. If it turns out not to be, then of course that's another issue. So the answer is yes, if that's your desire, we will do so.

>> Councilmember Oliverio: Thank you very much for your service and for the response. You know, the city charter has been stated multiple times, gives the mayor the only person that's elected citywide the ability to do this. And it's been done in an open manner. The meeting was public, I actually attended in the audience. And the mayor has a variety of things he's proposed, we're obviously talking about one specific item right now. I'm going to support that because at this point in my life, my current family I would not have any conflicts outside of my parents single family home but eventually I might find somebody I might have a conflict because of that. I'd take that conflict if I could find that person. So at the end of the day I'll be supporting the motion, thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. Just a general comment, I wasn't aware that we were going to go individually. But the memorandum that was put forward by myself and Councilmember Chu and Councilmember Pyle, really reflects first of all an issue with process. As well as perception. And, you know, as I stated in the memo, as clearly stated on more than one occasion, I certainly commend the mayor for taking very seriously the issue of ethics, since coming into office and in addition taking seriously the issue of sunshine. I was able to be at the meeting in June that had the public comment meeting. The majority of the audience there were city council or staff, and/or people that registered as lobbyists and to get their input. And it may just be coincidental but a number of the items that we are most troubled with at least in the three of us that forwarded the memo were almost all referred specifically to by a registered lobbyist that also at times is at odds with working partnerships. And so, to see those very specific items come very specifically before us, to make a decision on certainly, raises concern, however, to give the mayor due credit and to give the mayor the due respect of going through this process on an annual basis and coming forward with the suggestions, the suggestion we made was to at least have them looked at again. At least the ones we didn't have problems with. And so it wasn't an out right dropping of them. It wasn't saying you know we think it's politically motivated, let's get rid of them. I certainly am willing to give all of my colleagues the benefit of the doubt. But I do think that process and appearances are important. And there's certainly been expressed a sentiment up here regarding the panel. Now, we do have under -- my understanding is under our authority, we can put together temporary committees that can look at a variety of items. And that's allowable under the charter, and under our powers as a council. I think that this only further substantiates the appropriateness of the mayor's decision to put together a panel to go above and beyond what has been done in the past to review these issues. And so, by asking the individuals that serve on this panel, if they'd be willing to serve at the pleasure of the mayor and council, as a review committee, to take a look at some of the questions and concerns that have been raised and some of the amendments that even the mayor has put forward on some of these issues, I think would be entirely appropriate and consistent with what the mayor has been doing all along, which is a review of these processes and thoughtful input from community members who we know have meaningful experience to add. That would be going to the election commission and this group that was put together is that we do have people in that group that have experience that are inherently political and they can

offer that insight and we also have people from the nonprofit community, people from faith institutions and so we get a variety of experiences to give input on these recommendations. And additionally we can have the elections commission look at that as well. So it doesn't preclude us from doing one. And I think it only allows for us to have a better product and to have better suggestions and better recommendations come before us before we make final decisions if we have both of those groups, one in a very impartial way under the city charter, the elections commission, under their purview, another under maybe more subjective opinions, people that have different life experiences that can practically say what the impacts of these different suggestions are. So as to the specific recommendation 1, the conflicts arising in family relationships, yes we can probably name a half a dozen or so anecdotal relationships, as you all know it reflects Councilmember Campos dramatically the most very directly. We are requiring we're most aggressively requiring her to make a disclosure that's not legally required. I think that needs thought or further review. Not at the end of the day I would ask that it be dropped but I do think it deserves further review and as stated in my memo other types of relationships, deserve greater review as well. Some of them have been alluded to whether senior staff how they would record that how to report that whether it's even necessary to do that, rather than just going forward, with the changes or with the recommendations as set forth. Similarly, there are a lot of other relationships that may not be considered family relationships. But may have even a greater cause for concern under conflict of interest or just the perception of the public. We have elected officials that work for the city that clearly can cause at least a perception of a conflict even if there isn't one, even if everybody is working above board and individual. We have a member of the mayor's senior staff, that is of course not, often times appears before us, but that could be another example of a relationship that requires study. So if we're talking about the public perception then that should also be evaluated as well. So there are a number of questions that come from this that I don't think the mayor even may have thought would have come from this discussion being started. And so for that reason I think that it's most appropriate to further evaluate the recommendations on item number 1 as stated in my recommendation under number 4. Or before I get to that actually in the mayor's recommendation under A 1 and 2 providing more information to the public on why one elected official might have to declare a conflict, we can do that and ask the City Attorney to do that but referring to the memo that myself as well as Councilmember Pyle you put forward in recommendation 4 which is referring the remaining items from the mayor's memo to the biennial ethics review panel, I would ask that -- I would ask to put in a substitute motion that would in addition to have this review panel and again we can always ask the panelists to see if they want to do it again, so review some of these suggestions some of which have been amended over the last 24 hours. And in addition to that I would add to that to also on a parallel track or at least a separate track allow the elections commission to have an opportunity to review it as well.

>> Mayor Reed: Okay, we have a proposed substitute motion which is a slight change from Councilmember Liccardo's motion, which was to have the elections commission invite biennial review panel and I believe your motion is to send it to the other at the same time, completely tracks?

>> Councilmember Kalra: Yes a motion to review it .

>> Mayor Reed: And second by Councilmember Chu. That's the substitute motion to be discussed here. Vice Mayor Chirco.

>> Councilmember Chirco: I have some questions about some of the ad hoc ethics committee that the mayor called together. I know the elections commission goes through the process of screening by the City Clerk, background, you know, the conflict of interest, by the attorney's office and also goes through the diversity screening process. Did I miss any? They don't go through the -- they go through the City Clerk's office, they go through the attorney's office, did I miss anything Lee?

>> Lee Price: Yes, thank you, Vice Mayor. Then actually the city council as a whole interviews and then selects applicants for the elections commission, so they don't go through the project diversity screening process but the council itself does the screening and selection.

>> Councilmember Chirco: And while I did look at the list of the people that had volunteered for the ethics committee, none of these steps were done, including the approval by the council. And that I think is the critical element. I agree with sending it to the elections commission, that is the one that has the authority under the city charter. And I do remember when it was called the ethics committee which was extremely confusing to me as a

new councilperson. I do agree with sending the last paragraph to the elections commission. I also remember in the seven years I've been on the council and I certainly understand what Councilmember Campos is saying, with her husband being the head of the building trades, that there is a lot of apparent challenges. But I know, I remember one year where my husband was on an advisory board, Linda LeZotte's husband was often a advisory board, those were instances where we were told that there could possibly be a conflict of interest. I remember Dave Cortese, in a similar situation, as Councilmember Liccardo. Those are situations that occur periodically. And what I would ask the City Attorney is, rather than having to as Councilmember Campos pointed out, she can look at any agenda and find multiple items where she, you know, has her husband talked to this, has he not, has he talked to staff, has he not? There's got to be some way to do a disclaimer, rather than -- I know just how fun it is to disclose by all 11 of us, when there is an issue and we've met with this developer or this lobbyist. So there has got to be a method that makes more sense than oops, mayor, I need to disclose.

>> City Attorney Doyle: And I guess you could always structure something by default that you only disclose those things that you know your family member has been involved in. The question is whether or not maybe there's a process we could follow with agendas, that there's a routine question raised to the council that there may be some kind of, all councilmembers that there may be an item on the agenda that you know, sort of red-flag it, as opposed to having the affirmative duty to go through the agenda and say gee, there might be 12 items that potentially there's --

>> Councilmember Chirco: I think that makes a whole lot more sense.

>> City Attorney Doyle: I'm thinking out loud here. That is something we would have to come back with.

>> Councilmember Chirco: As much as I like to pick on you for being an attorney, largely our legal system makes common sense if you can get down to the bottom line. I know there's an area that is supposed to be annexed and my husband and I have some property there. Here is another incidence where I'm going to have to disclose if anything occurs within a radius, that there's a conflict. How about if there is a conflict, we disclose it, if there is not, there's nothing to disclose?

>> City Attorney Doyle: That's the law now.

>> Councilmember Chirco: I know.

>> City Attorney Doyle: What the proposal is that there may be situations where a family member may be involved and there isn't a legal conflict of interest but it should be disclosed on the record, that's what the proposal is.

>> Councilmember Chirco: Well, I think this can use some work. Because I want -- the idea is that we make government more transparent, more easily accessible, less cumbersome. And so I look to our attorneys for input. I just went through Ash's memo and kind of compared the two. And basically you guys are more close together than you are far apart. And I would appreciate having the clarity of, number one, as to what is a conflict that we still have to vote on. Now I look at that as information to me. But I want to see a less burdensome process on disclosure of conflicts.

>> City Attorney Doyle: An I think the examples that have been pointed out are clearly, if there's a financial interest, that's what the state law -- that's what the conflicts are intended to address. And you have a legal conflict if you have some financial interest in a government decision. And that's what we usually look at. I think this case is intended or this proposal is intended to cover the situation where an individual may be involved, albeit as a lobbyist or just interested in the issue. And yet they are not financially at -- there's nothing financially at stake but they are involved in the issue.

>> Councilmember Chirco: On the advisory board we had no financial stake and yet --

>> City Attorney Doyle: The way the law is defined and the way the attorney general interprets it even as a noncompensated member of a nonprofit, you have a financial interest. That's according to the attorney general.

>> Councilmember Chirco: I'll give him a call. I would support this motion because the last paragraph is being referred to the elections commission, and I'm uncomfortable referring it back to the -- what I call the ad hoc ethics committee. Because they have not gone through the screening process. The conflict process. And the approval by the council. And I think that's an important element. It was a panel selected by the mayor which is in his authority. But to bring it to council and have them vote on it, now, it is the council's authority. And so I would support sending the motion that Sam has made, seconded by Councilmember Constant, and with the referral of the last paragraph to the elections commission. And I would look to the City Attorney to come up with something that makes sense, that is less awkward and cumbersome and makes sense to our community. Thank you.

>> Mayor Reed: Let me suggest a slight modification because I think both of the motions are very close together. There is work, staff work that needs to be done and research or whatever that needs to be done, that that the elections commission is well staffed and equipped and has the background to do and they have officially been appointed by the city council. But this idea of Councilmember Kalra has of a parallel process, I think, has some merit. Because while we need to refer it to the elections commission to do that staff work and analysis, there is no reason we can't ask the members of this biennial ethics review panel for their recommendations. It is a broad based group and it would be helpful to have them give us something on these if we do that parallel process and expect the staff work and the staffing done at the elections commission that gives both opportunities from different people from different perspectives to give us their opinion of what they should do if that's acceptable as a parallel process that we expect the staff work and the staffing to be done at the elections commission but we also refer it to the review panel on the other processes I would accept the substitute motion.

>> Councilmember Kalra: That's fine. I think we'll knee the city attorney's recommendation anyway, I think a few people have referred to that as long as it's clear, as I stated in my mowing memo, that it's as stated in number 4 of my recommendation but applying to number -- the first recommendation. And that again, just to comment, make a comment to Vice Mayor Chirco's concerns, that again, the election commission is certainly a group that appointed by the council that is impartial and nonpolitical. But what I think a lot of people appreciated about the group that the mayor put together is they do have particular experience that's relevant to this topic. So in that sense I think that's where people, at least in a sense where I'm getting some value that folks are finding just to have them look at it as well. It is something under the mayor's prerogative to put those folks together and we're simply saying continue the work with that group of people as long as-as much as you can keep together or equivalent or other folks that may be appropriate for that committee.

>> Councilmember Chirco: If I could just -- I'm sorry, mayor.

>> Mayor Reed: Vice Mayor.

>> Councilmember Chirco: As long as it goes through the election commission where we have the council's approval and we have the screening, I'm not uncomfortable with -- we are, it's a group of very bright talented people but have it work in parallel. All right, thank you.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Well, my light was on before we kind of moved a little bit here. So I guess my concern when this comes up is what if forfeiture ten people on your panel, decide they want to participate and if we are running parallel processes, that doesn't seem to be a very representative group if you don't have a wholesale participation, where the original motion as amended by Sam gives them the opportunity to give input in the form at the elections commission, so they get the participation, but if you have a low turnout, it's still meaningful participation. Whenever you have two groups doing something in parallel, then you have a whole reconciliation process you have to deal with, as well. Well I think as Sam's motion worked it would get it kind of all in one place. You'd still have the same people involved to the extent they could be involved. As much as I appreciate the movement, I prefer going back to the original motion so I'm not going to support this motion for the reasons I just stated.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I'm almost there with this substitute motion. But I'm concerned about duplicating effort. I want to make sure we can do this expeditiously so we're not duplicating things. I'm concerned about the reconciliation that we may have to go through. The other concern I have, I don't know if I would like to make a friendly amendment or I would like at least Councilmember Kalra to acknowledge this concern. The scope. What I would like to see is the recommendations that are in front of us be the body of work that this group of is going to be addressing. That we limit it to that. That we not allow folks to go out and come up with 50 other things that they want to deal with. Ethics is a big topic and every year we will have big things to deal with. But I think the scoping should limit it to that the reason I was making the suggestion that we go to the ethics panel first is then we would eliminate that duplication. Then if that could not be constituted, then our fall-back was the elections commission. So if my colleagues are all going to support you know, doing a parallel process, I will go there. But I would feel more comfortable actually if we would just have the elections commission as the fall-back, not a parallel.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Herrera: I was hoping to have comment from Councilmember Kalra.

>> Mayor Reed: Did you want fall-back from the motion?

>> Councilmember Herrera: I wanted comment from Councilmember Kalra.

>> Councilmember Kalra: Recommendation for the review and if it go to the others if that becomes a recommendation I don't know we'll see. But there's more supplemental work on top of the work they've already done. So clearly it's not, I think it's narrow enough that we're not asking them to revisit ethics in San José or ethics in the county of Santa Clara. I the fact that the elections, the staff that monitors elections commission and the city attorney's office you know will do the staff work, it won't duplicate staff time. And other than that, I think there's a value to having more than one body evaluate policies, particularly when they're diversion bodies. Ultimately as Vice Mayor Chirco said, we have to maim the decision. There are oftentimes when different recommendations are flowed true the parks commission or the committee or commission, it comes to us and we have to reconcile it. That's partly of what I see is our duty. I see these as narrow enough recommendations that it can be done effectively.

>> Mayor Reed: Okay, Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. First of all, I want to recognize the fact that the mayor, you acknowledged that this was the first time you had the opportunity to hear my input on your memo, because of the Brown Act. And I am supportive of the fact of it going back to a body to be addressed and have further discussion and much more thoughtful process before it comes back to the full council. So I will be supporting the substitute motion.

>> Mayor Reed: Councilmember Kalra. Anything else on -- we have a substitute motion, which is a parallel referral to -- of the question on the disclosure.

>> Councilmember Kalra: And mayor, if I could, it also includes the background and of my.

>> Mayor Reed: Biennial ethics review panel in parallel. I mean that's a the motion. Anything else on that motion? All in favor? Opposed? Oliverio opposed, constant opposed, that motion carries 9-2. All right that takes care of item number 1, only eight more to go. I think they're going to go more quickly. Councilmember Pyle.

>> Councilmember Pyle: It would be tremendously laborious to take them one at a time, even though there is not disagreement on all of them. Can we expedite them on --

>> Mayor Reed: I think the rest of them will go very quickly.

>> Councilmember Pyle: I hope so, we're going to lose our audience.

>> Mayor Reed: The debate we just had on item number 1 answers the question about item number 2, item number 2, is closing the the loophole on lobbyists I'm recommending that we takes action on this quit. And I assume that we would refer that in parallel to the biennial ethics review panel as well and if that's the motion I don't know if there's a lot of debate.

>> Second.

>> Mayor Reed: That is the motion. Further discussion on that? Councilmember Kalra?

>> Councilmember Kalra: Thank you. In addition to referring it to the elections commission, I would ask that the language, at least, be looked at from the memo that Councilmember Pyle and Chu and myself put forward which again, you know, I think there will be probably much greater debate and discussion on what good cause will be but I think that at least starts the discussion effectively. I think that one of the issues with the memo that you initially put forth mayor is that it was far too narrow in the exceptions or exemptions to good cause. In terms of -- or excuse me -- or not -- I'm sorry, I was looking at the wrong, I was looking at number 2 on mine. I apologize. In regards to the closing a loophole, I will support it. The one -- I did want to make a comment in regards to that as well mayor if I could because there were comments that you made initially and the comment I want to make in regards to that is simply that some of the other nonprofits that were referred to that maybe are arms of some of the lobbyist organizations in this valley. Those nonprofit arms aren't advocacy groups and there are some nonprofits that are advocacy groups that aren't necessarily linked to lobbyist organizations. The issue that occurred here was simply that really the only nonprofit advocacy group that fell under the very narrow tailoring of your memo was working partnerships. I just want to put that on the record so it's clear that that is part of the great -- that is the greater problem that I think many of the folks in this room and that I certainly had with the initial recommendations that were put forward. So in regards to the modified recommendation, I certainly appreciate and want to thank you, mayor for drawing down on that original recommendation, and I am hoping that by going forward with this, and by allowing both the panel and the commission to take a look at it, that we can see whether this policy is even necessary. My sense is that it is not. And I would fear that we would be narrowly tailoring a new policy that wouldn't achieve anything in terms of appearances or in terms of our ethical standards in the city, thank you.

>> Mayor Reed: Okay, we have a motion on this one, all in favor? Opposed? None opposed, that's approved. Number 3, more sunshine for decision making boards and commissions, I don't think -- was there any argument on that? We have a motion to approve that recommendation and we have a second. Discussion? All in favor? Opposed? None opposed, that one's approved. Number 4, avoiding surprise at county and committees. I've modified my language, to just describe the -- what has been a best practice so far. And not making any requirements for unanimous vote. And so discussion on that item. Motion to approve the amended version of the language. Discussion, Councilmember Kalra?

>> Councilmember Kalra: On this one mayor as well, again I appreciate the language from must to should. I would just, you know, and in terms of, I would ask the City Attorney in terms of making this -- putting this type of language and what, if any, authority does it have? I mean even if it's just a matter of putting forward a best practice, does it have any authority on our action, does it have any authority on our actions at the committee level? Again some of the opinions compressed on the memo that we put forward, really has the ability for the community as well as the council if appropriate to make recommendations on the day or relatively soon before a meeting.

>> City Attorney Doyle: I think it serves as being part of the rules of the council committee meetings to be sort of a guiding principle for the committee. That if something comes in that late and it makes a substantial change that it should be deferred to the next meeting and that should be your guiding principle. Doesn't mean you have to, the committee can take action but clearly that's the best practice or a guiding principle.

>> Councilmember Kalra: Is the language in any way require a showing of the principle or the best practices?

>> City Attorney Doyle: Again the word should clearly implies that that is the policy of the council to defer it.

>> Councilmember Kalra: Okay, thank you.

>> Mayor Reed: We have a motion to approve the amended language. All in favor? Opposed? None opposed, that's approved. Number 5, process improvement revolving door restrictions and waiver. We have a motion to approve the process changes, not the substance of the existing ordinance. Just the process. All in favor opposed, none opposed, that's approved. Number 6, improving timely disclosure of calendars. We have a motion to approve. Councilmember Constant.

>> Councilmember Constant: I had a question here. You know, before we started posting these online, and having it more on a regular basis, we would print out quarterly reports and file them with the City Clerk so I'm just wondering if not the City Clerk is the more appropriate person to be monitoring it since it deals with disclosures and I know she doesn't want any more work but all of our disclosures go through the City Clerk's office anyway. So I just think it could possibly be the better avenue and I just wanted to know if there's a reason to go to the City Manager other than the City Clerk besides the fact that Lee doesn't want to do it because she has too much work to do?

>> Mayor Reed: Besides who wants to do this, it is not an audit and it's not an attempt to say whether or not people are doing calendaring properly, it's really about whether or not they're getting posted, I think the City Manager's office is the best place, and the City Clerk didn't have the capacity to add it on. We're trying to do it in a way that requires very little staff work. It will come to committee and be an item of discussion.

>> Councilmember Constant: That's fine, I just wanted to ask.

>> Mayor Reed: We have a motion on that to approve that. Councilmember? Who had the second? Not sure of that. Motion and second. All in favor, opposed, none opposed, number 7, protecting public participation in council hearings. That one has been discussed a lot. If you look at my revised language I am recommending if we do end up having a debate under orders of the day that the public gets to participate in it although that's not our practice. We try to wait until it's on the agenda but if we do, the public would get a chance to testify. Councilmember Constant.

>> Councilmember Constant: I would just -- I think it would help if there was some clarity that the debate would be limited to the specific action, that being the deferral, and not a debate of the issue. Because I could see us then having to have the full, long debate twice, versus just debating the merits of the specific action under orders of the day, which would most typically be a deferral.

>> Mayor Reed: Well, that's what I'm trying to say with just reflecting our practice of not having a substantive debate during orders of the day, put that into our rules but if for whatever reason the council decides to change the rules which we can do that the public gets to participate in that debate.

>> Councilmember Constant: As long as that's the intent then I'll make that motion.

>> Mayor Reed: Motion, I got a second down here Councilmember Herrera. Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I just wanted to ask the City Attorney that the language clear enough and I think Councilmember Constant already brought up one issue regarding it. But is it clear enough that it would allow, for example, it indicates that if a motion is made, on an individual item during orders of the day and the council debates the motion the public may offer testimony during that debate. Now, this is maybe semantics or maybe it's do detail oriented but you know if someone makes a motion and seconded and there's no discussion on the item does that qualify as debate?

>> City Attorney Doyle: No, not in my view and that happens all the time. Usually it's motion to approve orders of the day. But if someone says as part of orders of the day I want to defer item 3.4, there's a second, no discussion, that's a process issue. But if somebody says I want to hear it and I think we should discuss it then members of the public would have a right to testify.

>> Councilmember Kalra: See, I think that that's where I think there's an issue that's a distinction from the memo that we put forward and what's here. The distinction exists because essentially if there's a motion and there's a

second to that motion As a city, our principle should be to allow public comment on it, regardless whether we're in agreement or not. Often we put up motions, second, it's passed five seconds later. But even if it's orders of the day, the fact that it's a motion that's been seconded should allow for public to comment even though there's no agreement amongst all of us. Or amongst the council. What is your feeling on that, as far as allowing the public to speak on items?

>> City Attorney Doyle: Under the Brown Act you're not required except for setting the agenda to entertain public testimony. When the item is before it then you're required to allow public testimony. But when you are just talking about a procedure of, that doesn't require public testimony. You know my thoughts are, I mean, generally you've got, when we do orders of the day generally it's a motion on the entire -- any one of you might say, I want to defer item such and such and someone else, and then we want to adjourn in memory of so-and-so, it's taken as a package, motion, second, it's approved. I don't think the body wants that motion heard, only when there's some agreement .

>> Councilmember Kalra: The issue I have is only one of us for some reason can test the orders of the day for any reason. It could be any number of reasons. Then that allows for public comment. Okay? I don't know if it's appropriate that public comment's only opened up when there's a disagreement with one of us or more of us and the rest of the body. That it should either be public comment allowed or not when there's a motion that's been seconded. Now maybe the Brown Act doesn't require it but I think that's the question is whether -- is whether we should have you know a policy to allow for it. To increase the public discourse. It's not up to us to have a disagreement between one another to then call for public comment.

>> City Attorney Doyle: I think the general practice is when the item when there is an objection during orders of the day to defer an item let's say for example, is that it's not taken up as part of orders of the day, you go to the item and then that's where the conversation or the discussion takes place .

>> Councilmember Kalra: About I can just see that the maker of the motion would consider an amendment and basically to have the motion as written, and as amended by the mayor's office, to go forward as written. But to refer again to the ethics commission. This panel we've been referring to, the consideration of whether we should consider a greater allowance for the public to speak, beyond what the Brown Act requires. Not to take action right now on that but at least have them consider that with their thoughts. To sigh you know what, it's fine the way it's or to have constructive comment on that this, maybe we should allow for public comment at this point.

>> Councilmember Constant: Okay, so I'll take my motion intact and still refer choose whether they want to give input.

>> Councilmember Kalra: So as the motion as it stands, would go forward, and the public certainly has opportunity to speak. But what I'm asking to be referred is the discussion that Rick and I just had, whether we should allow for an expansion beyond the Brown Act to allow for public comments and/or debate even if we're not debating on items on orders of the day.

>> Councilmember Constant: I'm fine with that.

>> Mayor Reed: Okay, it's okay with the seconder, we have an amended motion, friendly amendment there, anything to discuss further? All in favor? Opposed, none opposed, that's approved. Taking us to number 8. Limiting anonymous complaints to the election commission. Recommended the -- we have a motion and a second to approve my recommendations, which were to deal with the anonymous complaints the whistle blower and.

>> Councilmember Liccardo: I would like to ask one question though relating to that parallel process if I could. I'm a little concerned about expansion of resources as we contemplate all of this. I know our City Manager issued a memorandum sometime ago describing the cuts to every department that are contemplated next year as we wrestle with a \$100 million deficit. I guess my question is for Lee or for Rick, really. How do you contemplate doing this without stretching resources? How can you pull this off?

>> City Attorney Doyle: What I envisioned, we would introduce, for example, number one, a draft policy that would leave open for question, what do you mean, how far down the family member, what types of involvement and maybe ask for comment. We're producing the same document, we're just assuming it more broadly. The only additional resource is to the extent that people want to ask us questions, we'll have to be available. Lisa Herrick is staff person so the elections commission, will be -- both of us will be available to respond. Basically just a wider '06.

>> Councilmember Liccardo: People will be present at the elections commission, they wouldn't have to staff two meetings?

>> City Attorney Doyle: By getting wider comment, we can just deal where the debate .

>> Mayor Reed: So.

>> City Attorney Doyle: I can't speak for the City Clerk though.

>> Councilmember Liccardo: Lee, did you want to weigh in? Okay.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. Now that I'm speaking on this motion at the appropriate time or this item at the appropriate time I do have an issue with the way it's currently written. This is my problem with it. As I said good cause is far too narrowly construed. There are a number of instances where we can have someone reasonable fear of come forward with an anonymous complaint we all agree that there should be some guidelines and some constraints on anonymity when it comes to putting forth complaints. The approximate with the way your mayor modified recommendation is put, it would put forward the narrow definition of good cause as stated in your recommendation. And essentially basically putting -- asking the City Attorney to put forward a resolution for our vote and at the same time asking the elections commission and presumably the panel to review and determine what additional situations constitute good cause for providing anonymous tip line complaints nor inclusion in the regulation. The problem is, then, while we're waiting to hear if there are any other good cause, we are putting forth a policy that is extremely narrow, going into an election cycle.

>> Councilmember Liccardo: Maybe I can clarify. My motion -- and I don't pretend to speak for the author of the memorandum, but my understanding is, the motion is for the elections commission in parallel with this other group to consider all these other issues together and come back, I don't think anyone wants to vote twice.

>> Councilmember Kalra: The language very explicitly says to adopt with return to council. With that clarification adopt the language so that there is something to review by both the commission and the panel and then the only addition I would ask is that just the language from my number 2 in my recommendations, as simply as a starting point, for discussion, I think they can certainly, the panel and the elections commission can then kind of get into the meat of the substance and determine that there are better ways of determining what good cause is or actually defining the term good cause, I'll ask if that's acceptable.

>> Councilmember Liccardo: The elections commission defining the term good cause in a way that it incorporates what I think we all contemplate to be good cause.

>> Councilmember Kalra: Yes, I any 92nd commission and the panel should have the opportunity to give specific examples and it doesn't necessarily prevent them from having an open-ended definition that could be up to interpretation as well. And so with that, that's kind of the more open ended definition is the one that's in my recommendation number 2. And the commission and the panel can do with it what they deem appropriate. They can say you know what, this is too general or it's general enough it will be fine we should also have the specifics but essentially this general definition which states for the record the phrase good cause should also include those who can demonstrate substantial vulnerability to retaliation by the person that is the subject of the complaint. I think that's a pretty good catchall to send forward to the elections commission and to the panel for their further analysis.

>> Councilmember Liccardo: I'm concerned about language and I've had some conversations with Bob Brownstein about this. My concern is that that language, as it's stated, I think anybody could claim that anyone else could retaliate. And unless you can define it, I think the word unique was one that I was really kind of focused on. If you can define it as some unique relationship that gives rise to vulnerability, I think that's ultimately where I think we want to go. What I'm concerned about is if you create language that's so broad really, it's the exception follows the rule and rather than try to wordsmith it on the dais, they're aware certainly from your memorandum this is one proposal, I expect they'll wrestle with that and many others too.

>> Councilmember Kalra: My comment is ultimately it's going to be a judgment call. The term substantial vulnerability does speak to the seriousness of one being open to vulnerability. Passing this language as well as the language you just put forward trying add something that's more specific to unique relationship that would cause that vulnerability, I think those are all things that they can consider. So I am just asking the language be passed forward. I'm not asking them to agree with it.

>> Councilmember Liccardo: I'm happy, I expect that all these memoranda be passed forward. I'm happy to incorporate some broad language about considering various options that have already been publicly proposed.

>> Councilmember Kalra: Thank you.

>> Councilmember Liccardo: Yes.

>> Mayor Reed: My reference to recommendations already made to the election commission were to prohibit anonymous written complaints and then to limit the anonymous tip line complaints to where there's good cause. We have not yet dealt with that recommendation. So today, we should at least take action to approve their recommendation to prohibit anonymous written complaints and to allow anonymous tip line complaints when there's good cause so we will have at least taken some action on their recommendation and refer that action as to whether or not it should be more narrowly drawn. But if we don't take action today then it's still open season for anybody who wants to make open complaints to the elections commission. Here in the political season it's an invitation for somebody to hide behind the anonymous complaint just to you cause political trouble. I don't think we should defer that decision. Let's go at least that far and approve the recommendation to prohibit the anonymous written complaints, which can be a huge problem and refer back to them the scope of good cause which they didn't define which I why I made these recommendations.

>> Councilmember Liccardo: I'm happy to have that conversation now. I am concerned about whether or not we've got -- whether this issue is ripe from the standpoint of having concerned -- considered what the definition of good cause should or shouldn't be. So why don't I offer this as a motion. That we approve this as written, with the suggested amendment by Councilmember Kalra. And we go forward with the elections commission that they've already proposed and as the mayor suggested, with further elucidation of what good cause means as articulated in the memorandum.

>> Mayor Reed: You're amending your motion, I think, if I understand it right?

>> Councilmember Liccardo: Yes, I'm --

>> Mayor Reed: Incorporating my language and Councilmember Kalra's language which was the suggestion to adds another provision in there. Is that what you're doing? i'm not clear.

>> Councilmember Liccardo: Yes, I'm adopting I believe the suggested -- mayor I believe what you're suggesting is a friendly amendment to return specifically to the language that you have here. And I'm incorporating the suggestion of Councilmember Kalra, that they consider proposals that have already been publicly vetted, specifically in Councilmember Kalra's memo about what good cause, how it might be defined. So the answer is yes, I'm accepting that friendly amendment.

>> Mayor Reed: And I'm not sure we had the second. Councilmember Herrera had the second. Okay, on that motion, Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor again, the elections commissioner, the chair that's in the audience, can you tell me what is it that was so wrong with this anonymous complaints, that the commission came out with an eye to no longer do it or to change that?

>> Would you run -- ask that question one more time please councilmember?

>> Councilmember Oliverio: Sure, your commission came up with the proposal to change the anonymous complaints. I wanted to get background why the commission went that way, what do you see as current problems or issues?

>> The anonymous complaint that we dealt with was difficult, greatly difficult on several different levels. And essentially, we were hung by our own rules. We don't want that to happen again. And again, there are lots of good reasons for that. Everybody is aware of those. We looked at several different ways of doing it. We know that there's some cities that just say, no anonymous complaints, whatsoever. We didn't want to -- we didn't want to go down that road. There are good reasons for anonymous complaints. And people may truly be afraid of retribution or retaliation. With this last case, we didn't know. There was no way to determine good cause because the anonymous John doe explainant, who just said he, it was a he, was afraid of retaliation. There was no way to determine if there was good cause. That's why we are saying we would like a hot line or some other method, where a legitimate whistle blower could make a complaint and a realistic decision could be made on the merits of that complaint and whether it should go forward. We ran into some problems in trying to do so. Did a lot of consultation with the City Clerk's office and the city attorney's office, and some of the things we came up with ran into primarily Brown Act violations. So that's why we got to having one person on the commission look at it. Wasn't ideal. We didn't like it, I don't think most of you like it. But that's really where -- what we were left with. So we would be more than happy to go back and look at this all over again, see if we can come up with a better solution.

>> Councilmember Oliverio: Okay, again, thank you very much. I'll definitely be supporting the motion for it. We had the abuse of this year spending a lot of city money on outside council because that's what it are required for this missing person out there. I think it's really difficult for us. Because I know if any of my colleagues were accused of doing something, I think any of them and myself would have some inclination if it was fraudulent or fake, to know that, and if it was true, to someone really worried about having retribution then it's fine. But we have a right to understand who is accusing us, especially if it's a false accusation.

>> Mayor Reed: Councilmember Liccardo? Councilmember Kalra.

>> Councilmember Kalra: Thank you mayor. As Councilmember Liccardo stated, if East not sure the issue is ripe, I agree with that, in that I still think it's more appropriate to send the entire suggested resolution and recommendations, to have the panel an opportunity to review it as well as the elections commission, clearly on some of the specifics the elections committee is going to be revisiting issues they've already seen before, so they may come to the same conclusion. As we could presume. Using one incident really does have sometimes the opposite effect of swinging the pendulum too far the other way and making it very difficult and I think this is something that we're all kind of discussing to make sure there are legitimate reasons or means for people to file complaint. Every anonymous written complaint may very well be the right way to go but further review of it I feel might be appropriate. I think we're taking a good step in narrowing the tip line complaints so that we have a better sense of why someone would want to leave an anonymous complaint however written complaints certainly have much more power than oral complaints and therefore require greater scrutiny. However I think by just outright banning it and not allowing for the full discussion to occur before the panel, I think limits our ability to have all the information going forward. So again, the original memo or the original recommendation to have it all go back to the elections commission and to the panel that Councilmember Liccardo put forward is what I would support and not the subsequent motion of -- to just parse out a portion of it to move it forward. I think ultimately it will all go forward and it's better to go forward as a package when it's all been reviewed simultaneously.

>> Mayor Reed: Thank you. On the motion? All in favor opposed, one opposed, Kalra Campos Nguyen opposed, that passes on an 8-3 vote. Councilmember Constant, seconded by Oliverio discussion on that I did note that Mark Skeen testified that other arbitrations are being done in public that was news to me. That was a

referral to the City Attorney and that's my recommendation, that we have the City Attorney do a legal analysis before we make a decision. City Attorney.

>> City Attorney Doyle: Mayor I just wanted to be clear on this, the proposal is going to go to the elections commission, I pay be under the Brown Act there is a very strong argument that these arbitration panels because it is created by the city charter is subject to the open meeting laws and we would provide an opinion to the city council first or at the same time we provide that to the -- because it may just be a matter of state law. So I just wanted to add that caveat.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: I think that by asking the City Attorney to do the legal analysis we presume that whenever there are some conclusions that are made that they be forwarded to us and we can take action as appropriate. But otherwise having it forwarded to the elections commission is appropriate. I would ask that the parallel track again as has been referred to be included, as part of the motion, and the last comment I'll make, and I'll offer this in terms of some of the comments that were made by a public speaker, that -- and it's referred to in my memorandum under recommendation 3, is that all the suggestions that have been made, including the one here publicly be taken into account when we consider, because -- and both legally and otherwise, when we consider opening up arbitration hearings to see if there are any other legal or ethical requirements that require us to open up any other types of negotiations that we would do because we're going down this path. I think there are plenty of jurisdictions to look for as examples of what if anything they were required to do, by opening up arbitration hearings, as well as what they pay have done voluntarily because of the fact that they were opening up what we all know are very important and oftentimes expensive contracts with the city in doing with law enforcement and dealing with our firefighters and by opening up that under the guise of openness as well as the fact that it's a major contributor in terms of our city budget, that if there are other items that are also major contract items and so forth whether there are policies that are set in play under jurisdictions that require it and if so, under what reasoning.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Yeah, I just point out arbitration is not negotiation. And certainly, most of the employees of the city don't have the ability to have a binding arbitrator simply set wages that are going to have -- and benefits that are going to have significant fiscal impacts on all the residents. Really without significant judicial review or anything like that. Arbitration is a quasijudicial hearing there's one person who is making the decisions there and that decision should be made in public. I think it's very different from a negotiation that is ongoing and everyone understands the give and take and posturing that happens. That is a very different world than the world of arbitration. So it seems to me that it's important for us to distinguish where we understand having every negotiation out in the open may really tie the hands of people to be able to engage in negotiation meaningfully. And certainly, I think that's probably true for a lot of bargaining groups that feel the same way, they wouldn't want that either. It's a very different reality from arbitration.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you mayor. A quick response to Councilmember Liccardo's the questions have been raced so I think the City Attorney can at least explore other jurisdictions as well as answer the question of why there's a distinction and what if any obstacles it causes as well as if there are jurisdictions that have allowed for it, and under what circumstances. So I think that a further analysis from the city attorney's office will answer some of the questions that have been posed already by the public but also as Councilmember Liccardo raises as well as to the distinctions of negotiation of private contracts, negotiation of bargaining unit contracts and arbitration.

>> Mayor Reed: I would like to remind us that we had a long debate about whether or not we should have negotiations in public about a month ago. In fact I think Councilmember Pyle was referring to those minutes earlier today and the council decided not to attempt to have negotiations in public. On the motion? All in favor? Opposed? None opposed, that's approved. That is the last item of the biennial ethics review. Next year I'll try to be shorter. Two years. Biennial. Have to do it again in two years, have to have a shorter list. we will now

move on to the 2010 legislative guiding principles and advocacy issues. That is item 3.5. Motion is to approve. All in favor, opposed, none opposed, item 4.1, report of the Community and Economic Development Committee of November 30th. Councilmember Pyle chairs that committee.

>> Councilmember Pyle: Thank you, mayor. The economic development committee -- department absolutely amazes me with the amount of work that they pump out. And to make it easier to refer to all that's been happening there, they have put out the draft of the notice for what's been going on for the last month and that's now being sent to every councilmember. And I believe to you as well, Mr. Mayor, you may have seen it at this point. And so with that I would like to move for approval.

>> Second.

>> Mayor Reed: Motion is to approve. All in favor? Opposed? None opposed, that's approved. Request for proposal for multifamily housing that's been here before, Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. I wanted to thank the council for deferring this item six weeks ago when it came before us. In the meantime I want to thank staff for the the really well written report and specifically Steve turner. In addition I want to thank Scott Johnson from finance and Mark Giovanetti for sitting down with me and going over my concerns. we have a transparent however in this case this item lacks competition or better said direct competition. Staff did nothing wrong in fact they followed the process and again I thank them for their work. However this item is coming to council for council approval and therefore asks for my judgment as a councilmember. My background in this area has shown me that without direct competition you do not get the best price and just today I was reading in Bloomberg financial news that competition is brutal, talking about business and this is from Maria Ramirez, U.S. economist and also saying we are squarely in the deflationary camp. There is way too much spare capacity. Meaning there is inventory, whether it's physical objects or software and therefore the deflation in pricing is incredible right now, so everyone is taking their prices down. Just last month I talked to a CFO in a company and I found out they are paying approximately half of what we would be paying . So to give you an example that's not necessarily technology, let's just say this. Let's say the city wanted to buy an American car or vehicle for our code enforcement officer. So we do an RFP for -- and three American vendors respond. One of them's Ford who makes cars. One who's John Deere who makes tractors, and one is caterpillar who makes construction equipment. If you added GM and Chrysler then you would he get a better price because it would be direct competition it is not a lot of money what we're talking about today compared to other things we spend here at the city. But most importantly and most concerning for me is it sets the price artificially high if we choose to expand this to other departments. My councilmembers ask for my judgment as a councilmember so therefore I'm unable to make a motion in support of this item.

>> Mayor Reed: We have a motion by Councilmember Liccardo to approve. I have a couple cards from the public people want to speak on this. We'll take that now. Matt Kaufman and David Wall.

>> Good afternoon, Mr. Mayor. Members of the council. My name is Matt Kaufman. I'm the C.O.O. of MK partners, the firm awarded to implement the solution for the multifamily loan portfolio management system. I'd like to thank you all for the time you spent discussing this item. I hope that my attendance today and at past meetings shows how important this project is to us as well as how much we value the City of San José. Prior to starting this company in 2006 I used to work as a consultant making a lot of money for for-profits. We'd implement sales force.com and other be sales force technologies to help them improve their profits and things like that. In my spare time that was very valuable as a learning experience and enjoyed it it was challenging. But in my experience I like to help third graders read, wrap presents around the holidays and volunteer around a shelter. I tried to merge the two and what we did is started a company where we implement those same tools and concepts but instead of doing it at for-profits, we do it at nonprofits. At educational institutions and the public sector. This project will improve city processes, and make employees at the city more efficient, which will eventually lead to more opportunities for safe and affordable housing for the City's residents. That's what this project's really about. This is a custom designed system built on top of salesforce.com but it's nothing that a bank or for-profit corporation or -- well, really any other organization other than organization dealing with housing and loans, would ever use. So it's very unique, and nothing like that used in competitors of salesforce.com. So I'm here today to make myself available. I have business cards with me. You're welcome to take them if you want to.

>> Mayor Reed: It's okay. Your time is up but if people have questions we'll take those up.

>> Thank you.

>> Mayor Reed: David Wall.

>> David Wall: My testimony has its basis on a supplemental memorandum dated 12-10 by our finance director. First I'd like to know if it cleared sunshine because I don't recall it at Rules. What this memo does state is rather interesting and material, is that the housing department didn't really pay any attention to their \$580 million worth of their projects. As evidenced by two audits. And this is an indicator of substandard management of this department. And I don't think any software system is going to solve this issue, because in this report on page 3 or 4 Los Angeles doesn't have an integrated system or other municipalities larger than ours by orders of magnitude do not have this. They operate on spreadsheets and yet they have no problems. And this is what staff found prior to the issuance of this report. And I just don't see, also, with this 20% loan to the redevelopment agency, in relation to the ongoing shadow of Senate Bill 88, there may not even be a housing department if this Senate Bill 88 passes. Also I think Councilmember Oliverio is on point. If you rely on bid sync, that is your discretion. But I think Councilmember Oliverio is on point that there wasn't enough competition and there is an entitlement program here insofar as once you buy a software program, the cost to maintain this, to upgrade it may be cost prohibitive. So all these things taken in consideration with the obvious lack of competent management at the housing department, as evidenced by this report, not my opinion but by this report, what Councilmember Oliverio has stated this project should be deferred for a variety of reasons. Thank you.

>> Mayor Reed: That concludes the public testimony. We have a motion on the floor to approve. All in favor, opposed, one opposed, Councilmember Oliverio, that motion is approved. On item 4 much 1, I think I had a card to speak on that. I got a little bit confused. Mr. Wall, did you want to speak on 4.1? The note said open forum. I will go back and let you speak, then.

>> David Wall: The actual card stated 4.whatever, 4.1.

>> Mayor Reed: I got confused.

>> David Wall: It's okay, today you can do no wrong.

>> Mayor Reed: Great.

>> David Wall: The committee for economic development is a unique committee. I've never seen them issue a bad word know to anybody, which speaks well of them even though it's not truthful. I'm -- primarily my comments are made by the mischaracterization of my testimony in the minutes. In reference to workforce 2, and the catalyst investment program. I forget if I butchered the name of it, the catalyst program. Both of those are very bad. Workforce 2 deals with federal money. There might be a federal auditor who might come pay a business. You have overlapping services. It behooves the city, these workforce funds carry an administrative fee, justifiably. But a certain amount of that fee should be transferred to the auditors office in my opinion to audit the workforce program so there's no conflicting or competing services that might give you embarrassment. As for the catalyst program that is a damning program that needs to be shelved in its entirety. The risk of a city principled on these investments is far too great. And that will be it for today.

>> Mayor Reed: Thank you. On item 4.1, anybody wish to reconsider the council action on that? No. We'll move on then to item 4.3. Which is the Mills act historical party contract for the Tommie Smith house. Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. I just wanted to thank staff and also thank Brian Bogus as the owner of this property. This is a situation where someone will recall started out as something of a contentious situation by some in the community and planning and development and so forth and the developer. Ultimately we got to a resolution because the other than stepped forward and really took responsibility and said that they wanted to do something that respected the history of Tommie Smith here in this house and the history of San José. With that I'll make the motion.

>> Mayor Reed: Motion is to approve, all in favor, opposed, none opposed, that's approved. 4.4, designated and naming Winchester boulevard as a targeted business area. Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. I did have a question in relation to the memo and kind of the practicality as this rolls out. As Laurel comes down. Laurel I wanted to ask you about the parking portion because we had a lot of discussions about that. I want to make sure I understand this right. Is there going to be any change in parking recommendations as a result of that or is there going to be have to be a subsequent action coming before the NBD?

>> Laurel Prevetti: Thank you, Councilmember Constant. Laurel Prevetti, assistant of Planning, Building, and Code Enforcement. This afternoon the item before you is essentially the designation of the Winchester Boulevard targeted business area. This is a designation by resolution. In parallel, staff is working on two additional items. The first are zoning code changes and sign code changes that would enable targeted business areas to enjoy some of the same benefits that our neighborhoods business areas enjoy. Secondly, for Winchester boulevard specifically, we are concurrently processing a general plan amendment for council's consideration in spring 2010 per your direction, per the council's direction on December 1st, per the motion that was passed by the council on December 1st, staff is expecting that the council will most likely rescind this resolution at that time. And since our parking standards already named the NBDs then that would be part of the action. So the CEQA analysis is underway with the help of the redevelopment agency in order to bring forth that NBD designation to you in the spring.

>> Councilmember Constant: So the answer to the parking is no, not yet?

>> Laurel Prevetti: No, not yet.

>> Councilmember Constant: Motion to approve.

>> Mayor Reed: We have a motion to approve. Further discussion? All in favor? Opposed, none opposed, that's approved. We'll now turn to item 4.5. Ordinance to allow extension of development permits in North San José. We have a motion to approve. I have a couple of questions for staff before we get into this in preparation for this meeting I need to disclose that I or my staff talked to Max Gardner of Irvine, John Udy of Essex, Ed McCoy and Brendan Hayes from Fairfield, Eric Shanehauer from the Shanehauer Group, for Thompson Dorfman and Novellus and Tom Armstrong from HMM. And I want to thank staff for getting us to this point. There are lots of projects we hope to keep alive, keep these folks in the game so that when the economy turns around they'll be ready to go in North San José. And did you have anything you wanted to add Joe or --

>> Joe Horwedel: We didn't have a presentation but was anticipating questions, that's why I was coming down.

>> Mayor Reed: I appreciate the Planning director extending the permits. Novellus and Irvine are deserving of having the permits extend on the criteria that the council put in place and my question is about the criteria and the other phase 1 projects, and how quickly you'll be able to make that determination. Because I think all of their permits expire January 31st, more or less.

>> Joe Horwedel: Mr. Mayor, Joe Horwedel director of Planning, Building, and Code Enforcement. We do have permits that actually still run through 2011 so we do -- have had a progression of projects in north San José. The first of those were expiring this year. We did extend those to the beginning of this year. With this action will allow us to extend them all two years. As we have told the developers and the council in the past that we have more units in phase 1 than can stay there. So partly, what staff is working through is, how to are address that while wanting to approve all the site and architectural goal that the council has stated, about really wanting shovel-ready projects, to move forward and not having people sit on projects, we are looking at a couple of ideas that would at the beginning of the idea move the site and architectural approval extend those projects forward but put the building permit issuance. So we are going to sit down with the developers, first week of January we're setting that meeting up right now to work through that list, and so that we can come up with a plan that would work.

>> Mayor Reed: Well, I think it's important that we move along, started doing this about a year ago and in June we gave you some authority and direction to get some of these extended, so that -- but we're way along in the process here with only two of them having been analyzed. There must be only a dozen or so to deal with. We've analyzed all of them. The challenge is, there isn't a clear break point. At this point the recommendation of staff would leave 3650 units approximately available. For the balance of projects, there is one project by Fairfield that I think should get an automatic extension for two years because they've done a significant amount of work. We've left that out of the memo 45, 4600 units competing for those slots, that's the reality is that are we are oversubscribed by about 50%. I don't have the flexibility to give them all the ability to stay in phase 1. When we went through and did the scoring with the surveys and looked at their state of readiness there was not a clear break point that said yes, this project is on this side and this project is on this side. The ones we put forward in the memo we felt stood above the rest. For the rest of the developers have come back and asserted their shovel-readiness. We're skeptical of that, we want to do a little more digging and to really assess that. Assuming that they all come back and really say that they're at the same level of shovel-readiness which for many of these projects is not very shovel-ready, what I'm looking at is to take the allocation and give every one of them a piece of it and they would get the second half of that through performance. When they pull a building permit for that first chunk they would get the back half, that would reward those that are ready to build developmentally build versus sitting on their entitlements.

>> Mayor Reed: I would like this to come back to us on January 26th so you can if we have to make decisions how to slice these things up then that would be a time we could do that if you haven't been able to figure out a reasonable system to do this.

>> Joe Horwedel: We have this idea we want to talk to the development committee on this. We have the ability to do interim extensions so we are not in the case of people worrying about their extension expiring because of that.

>> Mayor Reed: Is January 26th a meeting date? We miss a couple of dates in January. 26th is the council date.

>> Joe Horwedel: That would be the meeting time.

>> Mayor Reed: What my recommend is staff report on January 26th or any additional decisions we need to make and Councilmember Chu.

>> Councilmember Chu: Thank you mayor. As a way of disclosure, of the of the -- many developer have come forward and talked to me within the last -- past year, pretty much asked for a relief, may I say so. I'm really glad to see that the city is acknowledging it and respecting this by putting forward a recommendation to allow the permit extension. And when we come back on January the 26th, I also like to have a clear understanding of how we treat those properties that does not have developer name attached to it. I know there's a custom them in North San José that the developer pretty much left down. So how are we going to treat those projects, if we like to have a clear answer on in January.

>> Mayor Reed: Okay, no other comments on that. I have one request from the public to speak, that's David Wall. When he's coming up can we get a motion on the floor, Councilmember Chu?

>> Councilmember Constant: I actually already made one but I'll incorporate your comments.

>> Mayor Reed: The motion is made to bring the matter back on the 26th so we can take additional action if need be. Who had the second? Is that okay with the seconder? Yes it is so that's an amended motion on the floor. Mr. Wall.

>> David Wall: In the question regarding sunshine requirements on the date of this memorandum. I'm concerned about, these are big corporate type entities. They know what they're doing when they enter into agreements with the city. What I testified to previously, the sewer connection fee. Now I do not know if these fees are retroactive. I do not know if the park land fees are retro active insofar as the bait and switch operation that occurred in district 3 in Japantown. Similar product, and let's call these homes a product, were they -- where they switch from market

share, or they bait you with market share, and then they switch it to below market rate, for the variety of fee waivers, one of which is park land fee which is still under discussion. These indices want to obviously continue to manipulate the system. This system has a deleterious cost effect of staff, because these permits just don't float around in the ether, people have to maintain them. And so I would recommend that you tell these entities in no uncertain terms that they will all be treated fairly and equivalently, if they are not ready to go at a certain date when their permit expires, reapply, thank you.

>> Mayor Reed: We have a motion on the floor. All in favor, opposed, none opposed, that's approved. Item number 4.sen, Brookwood terrace family apartments, that was deferred from a couple of weeks ago. We have a motion to approve by Councilmember Liccardo. I'm not sure who got the second. Councilmember Constant got the second. We have a motion on the floor to approve. I see no further discussion. I have one request from the public, David Wall want to speak on this.

>> David Wall: Again I'm operating off of a memo dated 12-11 so I raise sunshine issues. This is a bad deal. All the way around. Having to transfer \$600,000 from a construction fund is flash money, to appease a co-partner in a project shows a fairly sophisticated manipulation of city governments and high finance. I think also, by -- as Americans, by taking on more debt to create more housing in which, at what point -- first of all there's no discussion in this memo about the sanctity of the guarantor of the \$600,000 loan as far as their financial background. In case they go belly up what recourse does the city have against a bankrupt entity, that provided this \$600,000 loan against a federal housing two, there is a glut of housing that is unleashed. It would be interesting to see how many of these projects actually go bankrupt, he people aren't leasing them, they're not buying into them. Because there is no economy to support it. now, we look at how also, they're switching players at to who's going to be the housing builder. And all of this is coming in at the last meeting of the year, on a supplemental memo which I find is material and should be vacated. Here let me quote this. Out of the previous memo, the previous use of this site was a junkyard and an affordable housing project will improve the neighborhood. That is an opinion. It is my opinion that site should be left as a community garden with orchards and a playground for kids instead of trucking in once again where the bait and switch moniker could occur. They could switch it because of these zoning regulations. I don't mind people being honest --

>> Mayor Reed: Your time is up. That completes the public testimony. We have a motion to approve. All in favor, opposed, none opposed, that's approved. 4.8 is a public utility vacation at 1542 Larkspur drive. We have a motion to approve. All in favor, opposed, none opposed, that's approved. Item 5.2 is our neighborhoods commission work plan. We have a motion to approve the work plan. I have one request to speak on that, that would be Don billings.

>> Don Billings. My wife and I are the owners of that property at 1542 Larkspur drive. First we'd like to thank the city council, mayor and all those people behind it for entertaining and hearing our request for the partial abandonment of some of the POE in our backyard. And number 2 on my list is the resolution in the summary has an error in it. Our address is 1542, not 1594. We called it in yesterday evening about 4:30 I think it was, somebody took the information and said it would be corrected and we'd probably get a phone call or a notice of difference. And I think about half an hour before this meeting convened, it hadn't been changed online. So I don't know whether the information ever got to the appropriate party or not. Okay?

>> Mayor Reed: This is the appropriate party. We're the ones who have to approve the resolution. So let's just make sure we've got it right. Whoever's got the official, official, official resolution, that would be the City Attorney. So we have a reference to a lot 22 of the track 1593. 1542 Larkspur drive.

>> Yes, 1542. It's correct in exhibit A and B. It's only incorrect on the very statement in the front, at the summary.

>> Lee Price: Mr. Mayor, Lee Price, City Clerk. Our office will actually execute that resolution. We've made a note, we'll make sure that the proper address is shown in the final and fully executed resolution.

>> Okay, good.

>> Mayor Reed: Thank you for bringing it to our attention. That concludes the public testimony.

>> Thank you.

>> Mayor Reed: We have a motion to approve. All in favor? Opposed, none opposed, that motion of course includes correcting the -- make sure we have the right address. I'm sorry. I got lost here. That was 4.8. Now we're going to do 5.2, neighborhoods commission work plan. Motion is to approve the work plan. All in favor? Opposed? None opposed, that's approved. 6.2, agreement with CalTrans for the highway 87 detour II sanitary sewer reconstruction project. We have a motion to approve. All in favor? Opposed? None opposed, that's approved. 7.1, award of contract for motor control centers at the water pollution control plant. Councilmember Campos.

>> Councilmember Campos: Thank you. I wanted to ask staff, John Stufflebean, a few questions. In reviewing the bid that we received, I notice that the second lowest bid which came from a company based in San José, do you know which company I'm talking about?

>> John Stufflebean: Yes, uh-huh.

>> Councilmember Campos: It's on the second page. I notice that they were within \$500 from the lowest -- the lower bidder.

>> John Stufflebean: That's correct.

>> Councilmember Campos: And I know that Councilmember Pyle talks about this all the time is how do we keep jobs local? And I know that the bidder that was the lowest -- well first of all I should probably ask you at the water pollution control plant do we have a policy for local preference, if something is within a very small percentage of the lowest bid?

>> John Stufflebean: Right on a consultant contract or something like that we would. On a construction contract I think we are required to just -- the city code requires us to simply take the low bid.

>> Councilmember Campos: The lowest bid.

>> John Stufflebean: Yes.

>> Councilmember Campos: So then my next question would be, what would we need to do -- the percentage was less than 1/10 of a percent.

>> John Stufflebean: I'll have to ask the City Attorney about that.

>> City Attorney Doyle: Councilmember Campos, we do have local preference when it comes to RFPs sales, 5%. This is a competitive bid situation I believe, and it's a charter issue. The charter requires you award to the lowest responsive bid. The other issue I would point out is, the plant is a joint powers agreement with the City of Santa Clara and there are a number of tributary agencies around the other cities that pay into the plant as well. So that's always a delicate situation when we look at any local preference or any types of contracts particularly with the plant and the other tributary agencies of those government agencies. Maybe the best thing for us to do is really give you a report back on when local preference applies and when it doesn't apply. The short answer here is a charter amendment would be required.

>> Councilmember Campos: So would it be feasible to have a -- well first of all, thank you, I'd like to see that memo. But would it be appropriate to be able to have that discussion with the other jurisdictions at a TPAC meeting?

>> City Attorney Doyle: You can -- that would be -- to the extent it's a policy issue and you know on nonconstruction type contracts, sure, I think it would be appropriate.

>> Councilmember Campos: I'll wait for your memo and then take it from there. Thank you. With that I'll move for approval.

>> Mayor Reed: Motion is to approve. Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. John I just had a quick question. On the face of the memo we're looking to replace 22 of these motor carriers. I'm wondering, now that the bidding climate is as good as it is, sort of lock in a price and having an installment contract where we can go back to the same company with a really low bid. Was that considered?

>> John Stufflebean: Yes, what we've done is we've evaluated the condition of each of the control centers and we've batched them together to take advantage of similar work. So some of them are just the situation where we need to work on them right now. So it's a matter of batching them and getting them done as they kind of progressed through the system. There's a lot of needs in the electrical system. The motor control area is only one place we need to get fixed up. The more we get done the more that are out of the way.

>> Councilmember Liccardo: Thanks John.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you. I'd like to piggyback on Councilmember Campos' thoughts. It's the lowest bidder, that's for sure but it's the lowest most responsive and we can't find out who's the most responsive unless we look at the particularly, I think that's abundantly clear with Katy Allen with some of the projects she was doing. I don't know if she's here. Do we not have an obligation to look at the quality of the people who are going to be involved, their qualifications and all the rest of it? Sometimes that saves a whole lot of grief in the long run. So do you look at those parameters as well, or how does it work? I mean the most responsive thing to me is probably one of the most important components of the whole thing.

>> John Stufflebean: Right, so my understanding is that we are really required to take the low bid unless there's some reason not to think that they are able to do the work. There again I'll let the City Attorney add to that if he so desires.

>> City Attorney Doyle: You essentially need to have cause and evidence at that time company or the contractor is not qualified. And it's -- I came to a debarment, you had to make findings that the contractor isn't qualified. Typically, and I don't know if this is done in this project but on many projects we do prequalification as part of the process. And that helps us at least, I'd say weed out or at least get an understanding of people who will be bidding. But I don't know if that was done in this process but it is done differently.

>> Councilmember Pyle: So in the prequalifications were all of those checked and both of the low bids?

>> Councilmember Pyle, Bhavani Yerrapotu, division manager, environmental services. For this particular project, no, we did not do prequalifications. This project actually is a design build contract which means we take it to a 30% design and we award it and the way our electrical projects are working there now, or staff, engineers and operations staff are very heavily involved in how we help the contractor move forward and put back. high electric voltage system is very critical to our operations there and also it's a safety issue. So we find the design-build approach as the most appropriate on these projects. We have done prequalification on projects larger than \$5 million, this was a standard replacement of motor control redirect and dict their work and manage the quality through a design-build process.

>> Councilmember Pyle: I'm bringing this up in the light of the fact that we've had some problems with the police substation. That wound up costing us a lot more money than I believe it needed to because we didn't take a look at some of the -- I don't know if that would have been a preQual but some of the qualifications that were involved with the people. So I'm sure you can understand my dilemma, I mean, our job is to get the most local people we can, Keithing the work here and getting the best qualified people for the jobs. I just wanted to hear from you that you are indeed doing that?

>> Yes on this project like I said the quality part of it, we are controlling that through the design-build process. And our staff, being very heavily involved, we have done prequalifications for the headworks projects which is an \$80

million project and other projects, this is like taking these motor control centers and replacing them. And labor part in this particular contract.

>> Councilmember Pyle: Thank you very much.

>> Mayor Reed: Any further discussion on that? I don't think so. Do we have a motion? Somebody made a motion, clerk says we have a motion. Clerk says we have it then that's absolutely the truth. All in favor opposed, none opposed, that's approved. 7.2 is the next item that's commercial solid weighs and recyclable collection franchise agreement. John Stufflebean is still here in case you have questions. Motion is to approve, all in favor opposed none opposed that's approved. 7.3, solar America cities special projects grant. A little good news here at the independent of the year.

>> John Stufflebean: I did want to say something here. I love to talk about good news. This is our third solar contract with DOE, we were awarded 1.1 million. They offered us \$900,000 and we negotiated up to \$1.1 million. We are doing well thank you.

>> Mayor Reed: I wanted to compliment the staff, it's I think seven different proposals involved here so a lot of work went into this so it will be nice to get the million dollars from the Department of Energy on these projects. Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor I wanted to join in praise? Thanks John for all the great work your team has been involved in around here. I think this will be wonderful for the city. The question I had, the property assessed clean energy financing programs, I know Oakland is rolling out with theirs now, consultant to look at all that. is there a need for us to reinvent the wheel here? At this point we have at least two cities that are involved. Can't we just borrow their materials and cut and paste and try to roll it out ourselves?

>> John Stufflebean: That is exactly the idea. I'm going to have -- marry Ellen, give us more detail on that.

>> Councilmember Liccardo: Organic.

>> Mary Ellen Dick, environmental services department. We are indeed joining with the California state association to go with many counties and cities in the -- statewide to go forward. We're looking -- we will be bringing a resolution for you to adopt, we're looking at the January 28th meeting. And to go forward with a full group process. Alameda, San Francisco, many of the other statistician. The county of Santa Clara voted to come into the program today, at their meeting today, and the cities like Berkeley who have a stand alone program plan to move into the program instead of staying stand alone.

>> Councilmember Liccardo: Very good thank you very much. Move to approve.

>> Mayor Reed: Motion is to proven. All in favor opposed, no one's opposed, amazing, we'll take the money, thank you very much. Next we'll take up a joint item. City council and redevelopment. It's 9.1, actions related to potential national basketball association franchise vis-a-vis HP pavilion. Have a motion to approve. We'll have a staff presentation and I have a couple of cards, people who want to speak on this.

>> Paul Krutko: Mayor, the staff's just prepared to answer questions, if there are any so --

>> Mayor Reed: Okay, Councilmember Kalra.

>> Councilmember Kalra: I just want to thank the staff and the arena management as well for getting together. I think it's important to set forth some of these principles and some of the strategies going -- so everyone has understanding, if an opportunity does present itself of what everyone can expect. I mean I think sometimes we've seen it certainly with baseball and sometimes other things come to pass and people get excited with the idea but at this point, appreciate the work that staff's put in, I appreciate the arena management, redevelopment agency and city staff all working together to come to some agreement as to what we all can expect out of this type of relationship. And I think we've seen a very successful relationship with the sharks and I can only imagine in the

future if we allow this type of -- if we go forward with this type of organization and this type cooperation that we'll have even more successful relationships in the future, thank you.

>> Mayor Reed: Take some public testimony at this time. Don Grelnick and David Wall.

>> Mr. Mayor, and members of the council. We're here to talk about this item, we've been at work for many years with the city staff. We're pleased with the progress that we've made and we are in support of the resolution and I'll be happy to answer any questions if there are any.

>> Mayor Reed: How does it look for the sharks making the playoffs this year? Don't answer that. We know it looks good.

>> That's the answer.

>> Mayor Reed: Any other questions for Mr. Grelnick? Councilmember Pyle.

>> Councilmember Pyle: Don, how it's going to work timing-wise for the basketball and the hockey not to conflict with one another? Are you still working on that or is that --

>> If we're lucky enough to get to that position, both of the leagues have schedules that are done way in advance. And there would be significant cooperation with respect to scheduling. Those of you who have been at the building know that we can change over, either from ice to basketball or basketball to ice, in an afternoon. So you could play a game of whatever sort in the afternoon and then play a game of another sort in the evening. So I think we could manage that.

>> Councilmember Pyle: Are you trying to make sure that the away-games are working out all right for both teams?

>> Exactly.

>> Paul Krutko: Councilmember just to remind Don, I think they've done that. Don, I'm ore hereof, they've done that with the NCAA. We've actually had the experience that we've taken the ice down for NCAA tournament games so it works.

>> Exactly.

>> Councilmember Pyle: Thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Don, I just want to thank you for what your team has done. Your successful management of the building has said a lot, that's the reason why we're so seriously in the hunt. If this should materialize, it's testament to the great work you guys are doing. Thank you.

>> Thank you, I'll report back.

>> Mayor Reed: That's all the questions for Mr. Grelnick. One more request to speak. David Wall.

>> David Wall: Finally at the end of the year I get the complement. The RDA and economic development. I think this program is going to work. My only concerns are, just from an accounting standpoint, I would prefer that the auditor, the office of the auditor be involved in the construction of the cost benefit analysis. Other than that, I think high density stadiums is in keeping with high density everything else we have here and I think the program will work. Good job on this one, thank you.

>> Mayor Reed: Thank you, that concludes the public comment on this. Councilmember Liccardo, do you have anything to at on this? I'm sorry, anything else we have a motion to approve, all in favor opposed, none opposed,

that's approved. Happy hunting. That concludes the city portion of the agenda. We'll now turn to the redevelopment agency portion of the agenda. We're going to have a little bit of staff change. Switch notebooks among other things. All right, let's take up the redevelopment agency consent calendar. Are there any items on the consent calendar that councilmembers would like to pull for discussion? We have a motion to approve the consent calendar. All in favor? Opposed? None opposed, that's approved. Item 6.1, public hearing on the proposed five year implementation plan for San José redevelopment agency project areas.

>> Mayor Reed: Mr. Director.

>> Harry Mavrogenes: Mr. Mayor, we have the report in your packet. this is a result of legislation from the '90s we're required to do this every five years. And it's consistent with our other planning documents and budgetary efforts and we recommend that you approve this.

>> Mayor Reed: We have a motion to approve. Further discussion on it, all in favor. Opposed. None opposed, that's approved. We have several other items that are joint agency and city items, as well. Starting with 8.1, that's the annual report of financial transactions of community redevelopment agency agencies.

>> Harry Mavrogenes: Mr. Mayor, and board, recommend that you approve this also.

>> Mayor Reed: We have a motion to approve. All in favor opposed, none opposed, that's approved. 8.2. City council and redevelopment agency board actions related to the fiscal year '09-10 cooperation agreements between the city and the agency.

>> Harry Mavrogenes: Again, Mr. Mayor, this is to carry our co-op agreement another two months until we finalize our budget so we can pay certain city expenses.

>> Move to approve.

>> Mayor Reed: Motion is to approve. Councilmember Liccardo.

>> Councilmember Liccardo: I just wanted to clarify, at this point, Harry, do we have clear indication from the -- you know, I'm sorry, I just realize my question actually relates to the next item so I'll withhold it.

>> Mayor Reed: All right. So the cooperation agreements, we have a motion to approve. All in favor? Opposed, none opposed, those are approved. So remaining on the agenda are issues relating to the budget. We have my budget message, my redevelopment budget message memorandum from the executive director on proposed contracts and payments, and then the agenda item for approval of the agency's 9-10 revised capital operating budgets and the 2010-2015 CIP. What I think I would like to do is to take public testimony in all three of those. They're all interrelated, it's pretty hard to sort them out. That way people can talk on whatever they want to speak on and then we'll take them up and take separate votes as may be necessary to do it, however the council wishes to do it. So let's start. I do have about 20 people or so who want to speak. Let me start with the item 8.3 which is my redevelopment budget message. Here we are in late December. Nearly halfway through the year still talking about the redevelopment agency budget for this year. But we've delayed this until we could have more accurate property assessment information and more importantly because of the uncertainties surrounding the state budget which unfortunately continue into the future. The future still looks uncertain and decisions have become even more difficult because of the circumstances. To make matters worse we have financial and economic conditions that were much the way they were when we decided to delay the budget process until later in the year. And so what I've done with my budget message is to consider the recommendations of the agency, the staff, the community, and weigh the opportunities. So there's a lot of work we still have to do and many uncertainties that need to be resolved. And so that's why I've recommended in my budget message, with my supplemental recommendation, that we defer actually adopting the budget and the capital improvement program until February 23rd. That will allow us to have more certainty, we hope, in the ongoing negotiations with the county. Because we share revenues with the county and we are in the process of negotiating that arrangement. It would hopefully provide us some certainty with our ability to borrow housing department funds and hopefully more certainty with the redevelopment agency's ability to pay the \$75 million that the state of California is taking away from us. So what I'd like to do is just summarize what I'm asking the council to do. Approve the budget message

with a series of modifications. operating budget and the capital improvement program until February 23rd. approve the executive director's recommendations for the agency contracts and payments during the interim budget period that's item 8.4 so between December 16th and February 23rd, we have the items that the executive director has identified that we need to do in that time period. That's all set forth in my written memorandum. I have one amendment to my recommendation, that I would request the maker of the motion add, include in the motion and that is some additional direction regarding the civic auditorium phase 2. We need to direct the executive director to move forward with obtaining bids for the civic auditorium but to bring back decision on the award of bids February 23rd meeting. That way we can move ahead but that allows us to ultimately not have to make that decision on spending the money until we are more certain about how much money we have. In addition, the other items in the director's memorandum are items that we will discuss with the county in a meeting on Monday that's already been set up. The other thing that I've recommended is, we direct the City Manager to develop a method to fund \$62 million of the state take away. Remember I said they are taking away \$75 million? We are proposing that the City Manager figure out a way to fund \$62 million of that in year 1 and present that plan to us with an information memorandum by February 1st of 2010. And until there are a viable alternative funding sources, borrowing sources have been identified and approved by the council, the housing department should continue to pursue the possibility of making a loan up to \$52 million a year in year 1 and \$13 million loan the year two. The state has seek to minimize borrowing cost and avoid any potential long term negative impacts on the General Fund and to ensure that to the extent housing funds are used that the housing fund is made whole when the state take away loan is repaid. But we should defer the decision of how much the city should loan the agency vis-a-vis the housing fund until February 23rd. Clarify what I'm really saying is, let's be prepared to do what we need to do but not make the decision until we have the information in hand on February 23rd. But that would mean the maximum amount possibly borrowed from the housing department would not exceed 52 million in the first year and 13 million in the second year, that's the maximum amount. Funds borrowed from the housing department would be set aside and not spent until it's clear that such funds must be turned over to the state. We do still have hope that we will litigate and win against the state. If there is a positive outcome to the lawsuit already filed by the California redevelopment association then those funds would revert back to the housing department for housing department purposes. More important I suppose just to be clear is the agency and I'm not proposing that the agency suspend any portion of the housing set aside tax increment, we're following the route identified by the legislature in terms of borrowing this way. Also recommending that we direct the City Manager and the executive director to return to us within 45 days with a recommendation to consider whether or not the time line of the convention center expansion should be accelerated and whether the advancing funding from year four to year two is viable and necessary. That report that comes back in 45 days should include a discrimination of the proposed expansion project, an outline with how it would be financed, along with any recommendations from the convention center expansion technical advisory committee. Then on February 23rd, we want a report to us, city council and agency board, on the status of all the city and agency staff actions to fund the state take away payments, the negotiations with the county of Santa Clara, as well as updates on assessed values and tax increment projections, the schedule of the pipeline projects, the impacts of financial market and economic conditions on the agency's capital and operating budgets. And I have hoped that by February 23rd we'll have a lot of clarity on a lot of issues, but it certainly is unclear now, as to which direction we'll ultimately be able to go. Those are my recommendations in the budget message. Which really take into effect both item 8.4 and 8.5. We'd like to let the executive director have any comments that he has on the recommendations.

>> Harry Mavrogenes: Mr. Mayor, members of the board, I want to thank the mayor for his message, and advice along the way here. This is a very difficult year. I also want to acknowledge the help from the city administration, Debra Figone and her staff have gone to extraordinary lengths to help make this happen. We have some more work to do but I'm confident by February 23rd we'll have a lot of answers for you. We will continue to work with Team San José and the city administration on the convention center project. That is a very important project for the city. I think we can get there if we all work together. So again, I want to thank the mayor for this message in support. And we'll continue to work together to make all this viable during this next year. Thank you.

>> Mayor Reed: Thank you. Councilmember Kalra.

>> Councilmember Kalra: Mayor, I don't -- you indicated you wanted to go to public comment. I can put forward a motion at this time but would you prefer to go to public comment and then come back?

>> Mayor Reed: I think it would be better to go to public comment who have waited a long time. .

>> Councilmember Kalra: I'll wait.

>> Mayor Reed: Public comment, please step down, we'll start with John Southwell, Joe Kirchoffer, Benna Chang. I know that some people may have gone and left but I see John Southwell, I know he's here. John.

>> Good afternoon, everyone, Mayor, council, thanks for hearing us, I was actually still writing my notes up there. John Southwell, I'm the general manager of the Hilton Hotel and the Crown Plaza Hotel in downtown San José. I'm here to encourage, urge council to really support the -- creative ways to fund, what I might consider, it may not be surprising to you little bit of a unique perspective to know it's obviously an economic driver, it's not only an important thing and a good thing for the hotel community, and downtown and our community in general I having been here long enough involved in that end of it I really believe that it's critical to our business remaining viable for the future and I just went back to seven or eight years ago and we got really close and we had a vote that was up and I think most of you are familiar for what happened there and for various reasons it didn't pass. I sit here today and think where would we be here today? We would be in a far less precipitous situation, we wouldn't be great, the whole world knows that, but we would be significantly better off had we been able to move forward with that convention center expansion in the past, had real life examples, within 30 days, we are going to experience a hole in our convention calendar which is arguably the biggest group that used to come to San José, and did for since I've been here which is about 14 years, and we're going to feel it. The whole economy is going to feel it, the hotels are going to feel it, the employees are going to feel it because they won't be working. And that whole group left, they love San José, they left because we did not have enough space to help them make the most that they can on their exhibitors. They have an exhibitor waiting list that's very large so they've moved to our city our friends up to the north because we didn't have the facility. Had we had it and many, many others would be coming into San José and we'd open up a whole new world of business so I'd urge us not to wait and to try to find creative ways to make the projects happen. A lot of work has gone into it.

>> Mayor Reed: Your time is up.

>> Thank you.

>> Mayor Reed: Joe Kirchofer, Benna Chang, Claudia Shope.

>> My name is Joe Kirchofer. I'm here on behalf of mid peninsula housing RDA budget we urge this not only because affordable housing is a priority for the residents of San José and not only because the currently proposed cuts would affect development of new housing for at least the next five years. We also urge to reduce this take because the current proposal is the most expensive way to balance the RDA budget. By forcing housing to funds and cost of balancing the budget not just the housing but to the city as a overwhelm. We understand that balancing this budget includes a number of difficult decisions that there will be tradeoffs involved and that all groups must pay their fair share. We hope bond interest rates and without ending the good and important work of the housing department. Thank you.

>> Mayor Reed: Benna Chang, Claudia Shope, Bob Brownstein.

>> Good evening, my name is Benna Chang here on behalf of the Silicon Valley leadership group here. As you know, the leadership group represents more than 300 companies here in San José. We do an annual survey every year of our members to ask them of what their top business challenges are. This year as in years past housing has been the number one concern. In particular, the lack of affordable homes in this valley really affects our company's community's we understand that the redevelopment agency is facing a very tough decision there are many worthy projects on the redevelopment agency's work plan. For us the issue is not whether or not these projects are worthy. They are. The question is, about priorities. Affordable housing helps some of the neediest in our community. Not to prioritize them in these tough times will have very serious negative short term and long term impacts. We budget review in February to adopt the redevelopment agency budget. This will provide some time to identify other sources of money that can be loaned at lower cost than housing money, thank you.

>> Mayor Reed: Claudia Shope, Bob Brownstein. Bill Zaretka.

>> Good evening, I'm Claudia Shope, I had been here before help I received in the hope specifically improving my home. I really appreciated the work that redevelopment staff members Art Nino and Marcus roughing had done in actually making my project come through. And I really appreciated that help and I just wanted to ask that you consider that other people, and this is a housing issue because to have people's homes improved, this is very good. Other people in our area, I live in the goodyear Mastick neighborhood and they are trying to go ahead and get their projects done. And I would ask these things be considered and not cut when you're looking at your budgets. I think it's good you're waiting until the 23rd to do that but in doing that I would ask that you really ask the staff and people to go back and make sure that they consider all the projects, that the neighborhoods are really working on hard as well as the housing issues and their projects that are important to their neighborhoods. So thank you for your help, from me personally, in the past and I would -- and as well as your good staff members, Art Nino, Marcus roughing and other people that work with me. I would like to thank you for that and ask other people who are also in need of housing assistance.

>> Mayor Reed: Bob Brownstein, James Zaretka, Myrtle Ferrand.

>> Bob Brownstein: To parts of the mayor's message one is rebuilding the convention center. That will impact jobs in fact it will impact the entire future of downtown hospitality industry. The second is the intact on the city's housing funds which will impact a large number of people having a chance for affordable shelter. With the stakes so high, it is incumbent upon us to carefully review every feasible option to make sure we make the best upon decision. To achieve that objective, we should try to modify the mayor's supplemental memo by the memo issued by councilmembers Kalra and Nguyen. The mayor in his memo wisely asks for time to delay spending until February. The Kalra Nguyen memo says let's use that time, in order to carefully review all of the options associated with rebuilding the convention center including those that are generated by Team San José and looking at all the funds that might possibly be used to pay the state housing funds and other funds as well. By looking at all the options by subjecting all of them to intense and critical review we will be most likely to make the best decision in tough circumstances this February. Thank you.

>> Mayor Reed: James Zaretka. Myrtle Ferrand, Josh Lee.

>> Thank you, thank you for the opportunity to address you again on this important issue. We appreciate the mayor's efforts to ameliorate the effect of the state rate on the affordable housing fund. Both the \$10 million reduction that he's already proposed and the assurance that the housing fund will be made whole at the end of the day these are both important and good strides forward. Of course as advocates for people who are most in desperate need of affordable housing our thousands of clients many of whom are disabled and have other conditions that make it hard for them to find housing of any kind we regret any reduction in these funds but we're also not ignorant to the major challenges that you all are facing. So we realize sacrifice is needed in every area. We still think the effect is a bit disproportionate on the housing fund so we would also support the suggestion in the Kalra Nguyen memo to reduce that and look at a figure closer to \$40 million impact, which is still sort of mind boggling but again, we are in the situation we're in. We examine other ways to close the budget gap so thank you for your thoughtful consideration of this.

>> Mayor Reed: Myrtle Ferrand, Josh Lee, Albert Russman.

>> Good evening, Mayor Reed, councilmembers, my name is Myrtle Ferrand, community activist. We all understand that the city council and the redevelopment agency have to make tough choices this year. However the affordable housing budget should not have to bare a disproportionate amount of the costs. I'm asking you to be fair and seriously consider other funds and programs so we all share the pain. The council should support Councilmember Nguyen and Kalra's memo to prioritize housing jobs and affordable housing, thank you.

>> Mayor Reed: Josh Lee, Albert Ruisma, Nicole Calenter.

>> Mr. Mayor, members of the council. My name is Josh Ende. I am a representative of Sign, Display and Allied Crafts Local 510. The members of Local 510 are the professional trade installers that do the actual work of putting in trade shows and conventions in San José and throughout the Bay Area. We have a couple hundred members during the course of the year that will work at the San José convention center. I'm here to urge you to do everything you can to America the convention center expansion and renovation a reality and to do it as quickly as

you reasonably can. It will create new jobs, it will preserve existing jobs, and it will be an economic stimulus to the entire community. But thank you, thank you for your time.

>> Mayor Reed: Albert Ruusma, candy Capagrassi .

>> It is this is the first time I have been to these chambers. I used to go to the old city quite a bit. One of the reasons I came down today is to paraphrase something I heard the president say the other day when he was talking about the banks. Somebody just doesn't get it. Our members are out of work now. The time to invest in this community is now. Days, weeks, months, mean a lot to people who had a bad year last year. And don't have anything left to have a bad year, this year. We urge you to get off the dime as fast as reasonably possible. Thank you very much.

>> Mayor Reed: (saying names) Joshua Baruse. Brian Carr. Bill Guthrie James silverwood. Come on down, please. Plenty of room to sit in the front row while you're waiting.

>> Didn't know my name was going to come up so quick. Honorable members of the council, as I mentioned earlier my name is Bill Guthrie and I'm both a San José resident of Councilmember Liccardo's district and I'm a elected official, UA local santa Clara County many of whom live and work in the City of San José. Our membership like so many others in this economic recession are facing severe levels and periods of unemployment. The city's current unemployment rate is somewhere over 10%. Construction workers in general are facing unemployment rates up ward of 30% with little or no reprieve in sight behind these numbers and statistics are the story of real people, real families being hurt, people losing their jobs, people losing their homes, increasing divorce rates and a host of other horrible things that accompany economic insecurity. The RDA budget as it stands contributes rather than alleviates this pain. While the residents of our city need good jobs the proposed budget kills the San José convention center project that would provide many good construction jobs at a time when a good job is hard to come by. While San José residents are facing foreclosures and evictions from their homes the proposed budget seeks to make dramatic spending cuts to affordable housing. I recognize the budget cries mines difficult decisions should be made. But those decisions should not defund projects that put people to work, to stimulate the local economy or to provide affordable housing for our residents. Thank you very much.

>> Mayor Reed: Joshua Baruse, Brian carr James silverwood.

>> Again my name is Josh Bruce of District 8 here in San José. You know as I mentioned earlier we are embracing overwhelming, unprecedented times. All aspects of their workforce will definitely be able to live comfortably in the community. to prioritize jobs and affordable housing. Thank you for your time.

>> Mayor Reed: Brian Carr, James silverwood, Ulysses Blackwood. Luis Torrez.

>> Organic, mayor and members of council. My name is James silverwood. I'm a member of affirmed housing. Our company we have to come down on one side or the other. Today I'm here to oppose the mayor's budget proposal and would urge your support of a modest amount of a transfer of about 35 or \$40 million and the balance done obtained from other city sources. Our company develops affordable housing. At this past summer we completed the fairways and San Antonio court. We have a proposed project Donner lots of, a 156 unit smart growth sustainable green project located in Councilmember Liccardo's district. We have been working on this proposed development for the past 18 months, and the project has all much its required entitlements. This development would serve the downtown workforce and if the council supports the 65 to 75 million borrowing proposal, the project will certainly meet an untimely death. As our company works throughout the state of California on affordable housing I am currently unaware of any other major California city that is proposing such a shift of funds from housing to redevelopment agency. As a solution to this unfair state take of RDA funds. It should be mentioned that a transfer of 65 to \$75 million will effectively put the housing department out of business in the production of new affordable housing by our estimation for a period of four to five years. This is not a short term effect. This will be a long term effect here in the city. Surely, a city as progressive as San José can find some way to not unfacial cripple its housing department.

>> Mayor Reed: Sorry your time is up. Ulysses blocket. (saying names).

>> My name is Ulysses, I'm a house man of Marriott hotel, I've worked here two years. I'm also a union member of local 19. My job and my family who is starting the university. Over the years, working with the union and the management in these important improvements in my job. But my job depends on visitors to convention center. About economic recession has affected me, not having my 40 hours a week and overtime. It has affected my community because I people to offer their homes and permits we're dependent on the city council and the LID to make decisions to be good to economic health of our city. Supporting convention center expansion, minimize cuts in house only way to get on recession. The council should support councilmember Kalra and Nguyen memo, which amendment is a major budget message to affordable housing thank you for listening to me.

>> Mayor Reed: Al Chokra, Luis Torrez, Letitia Alvarez, Linda Didis.

>> Good evening, my name is Luis Torrez, working for 9 years. I live in south part of San José, I answer am member in local 19. My job, my community is important to me. My job living wage who with because I have family, over the years, working to me union, we this important improvement in my job. The economy, having our moneys to pay my bills. Community because for people to apartments, whole city need affordable housing, for a chance grow. .councilmember Kalra and Nguyen memo which amends the mayor's message, I'm sorry for my English.

>> Mayor Reed: That's okay, you did fine.

>> Thank you.

>> Mayor Reed: Linda Didis, Barbara Diehl, Mark Daly.

>> Hi, I'm Linda Didis, I'm an AFSCME business agent and also a resident of district 6. You've asked the staff to renegotiate all encumbered contracts and to achieve savings and report to the board and liquidating ought contracts that are not essential. However the agency's response is a little troubling. They've replied that they've set a goal of liquidating 10% of the encumbrances reflected in the revised budget proposal which is \$5.5 million. They claimed to have achieved \$4.2 million of that which is about 76%. I just feel at this point that that response to the direction given by the mayor and the city council is that we've already made cuts. This is unacceptable. There aren't any other departments or bargaining groups that are allowed to say we have already made our cuts. The agency needs to follow the direction they've already been given and what thank you for your time.

>> Mayor Reed: Barbara Diehl, Mark Daly, William O'Connell Rebecca Heakin.

>> Mayor Reed, thank you. I'm Mike Daly, I'm with Eah housing. We've met with a couple of the councilmembers. My CEO met with Councilmember Chirco, we appreciate that. We have Baypointe, over 100 units and it's really great to see the union folks out here talking for jobs and housing, I believe 120 units would provide jobs. Some of the only development that's happening these days and that's going to happen in the current economic climate is going to be affordable housing, because the market isn't there for high-end housing in a lot of cases. And so we can get the funding together and we have a project that's just coming online now, we have another project that I think will be breaking ground next year. Not in San José, but we would very much like to do another project in San José. And so we do support councilmembers. We commend Councilmember Nguyen and Kalra for this proposal and their memo and also waiting to see if you can come up with other sources of funding other than housing. Housing is really a desperate need. The last time why were here we sent you a video that showed Ktu television 2 in the morning when we had a waiting list opening. We didn't have an opening in an apartment, we had a waiting list that hadn't been open for five or six years and that waiting list had people lined up around the block a couple hundred people. So affordable housing is more of a need now than ever. Folks are telling you that there are more than ever on the edge, that one paycheck away from you know, being in trouble not having housing. More and more people are in that situation. So I appreciate taking nor time and especially appreciate the memo of councilmembers Nguyen and Kalra. Thank you.

>> Mayor Reed: (saying names) Fred Hirsh.

>> William O'Connell, resident in district 3. People who are homeless are low income people cannot be here today. Many of them, most of them because they are out either looking for a job or looking for a place to stay tonight. So they're not here to say what I'm going to say, and that is, that your proposal to take so much money from affordable housing is unfair, and unjust. Disproportionately, the burden falls on the people who can less afford it. I ask you then to consider the proposed amendment put forward by board members Kalra and Nguyen and even their \$40 million proposal is not just. 15 million would be a 20% deduction from the funds. Thank you.

>> Mayor Reed: Rebecca Kekin, Sandy Perry Fred Hirsh, Forrest.williams.

>> I'm the reverend Rebecca Keikin, director of the interfaith justice tonight I'd like to jog our historical memory collectively. Board member rabbi Melanie Aaron of congregation Sheer Hadash, wrote this memo in 1999. Dear mayor Gonzales, I'm writing to thank you for meeting with us earlier this month. We appreciate your taking the time to listen to our concerns particularly with regards to very low income housing. I was pleased to hear that you were responsive to our concern that the \$24.9 million allocated last spring by the redevelopment agency be used for housing, for those earning less than 35% of the median income. We all understand that this will mean less total units, but feel strongly that some housing for this segment of the community be provided. We look forward to working together, during your tenure as mayor. Sincerely, rabbi Melanie Aaron, interfaith council . We looked forward to this and in the years to come. We will enjoy the conversation and continue to be advocates for the poor and the vulnerable. Thank you.

>> Mayor Reed: Sandy Perry, Fred Hirsh, Forrest Williams.

>> Good afternoon, or good evening, I guess. I'm Sandy Perry. And I'm speaking for champ deliverance ministry. And we support any kind of deferral, delay, or reduction of this loan from the housing department as much as possible. We believe that the mayor's budget message is an improvement over the original staff proposal. However, the impact on housing is still disproportionate. The affordable housing program is one of the very few programs that the city council and the city can enact similar to living wage, that directly assists extremely low income people. The city council has an opportunity to make a real difference in the lives of real people. And also like to point out that the housing program is extremely important for major city and nonprofit efforts such as destination home and step up Silicon Valley. I'd also like to like for the city to put to rest the false dichotomy which continues to be raised about economic development as opposed to affordable housing. As the Mercury News put it affordable housing is economic stimulus. The question is, having appropriate balance. In my opinion, in our opinion the Mayor's Budget Message is stilt not in balance and we support any and all measures to support the disproportionate impact on housing as much as possible. And finally we would like to get the city to get involved in repealing this dysfunctional two-thirds rule which the state has for adopting the budget which in my opinion is the cause of this cries in the first place. Thank you very much.

>> Mayor Reed: Fred Hirsh, Forrest Williams, Josh Endy.

>> Good afternoon, or evening, good afternoon, I'm still Fred Hirsh, still a plumber, still a member of plumbers local 393. I'm friend with most of you and I know your concerns are deeply felt about the needs of people like ourselves, working people and their families. And I know that I don't envy your decision. You have a tough job. But there are options, and I surely recommend that you follow the lead of Ash Kalra and Madison Nguyen in reviewing all the options, the matter of the construction jobs is very important to the members of our union. And to all people in construction. It's 650 jobs. We have over 30% unemployment in our union. Especially affects our younger members. They've never seen a shock, an economic shock like this. In our residential sector, we have over 80% unemployment. People who haven't worked for two years, people who need affordable housing, and who need to build affordable housing. There's dispute as to whether this is a recession or a depression. But it's always compared to the great recession, depression. Whatever it is, this is a crisis, it's an economic crisis. Spending the money on housing and construction stimulates the economy, will help get over the crisis.

>> Mayor Reed: Sorry your time is up.

>> It's not time for business as usual. Please -- please take the lead that Ash Kalra and Madison Nguyen give you.

>> Mayor Reed: Forrest Williams, Josh Endy, Enrique Fernandez.

>> Good evening, mayor and councilmembers. It's a privilege to be here before you today. I'm Forrest Williams and I'm a resident of district 2. My councilmember is Councilmember Kalra. I know you have a difficult job. I mean, I kind of experienced some of that. And you have really been under the gun, because of no fault of your own. You're in this situation. And I'm proposing a couple of items, one thing I'd like to congratulate you on in the sense of giving some more time to take a look at this, to really see how we can find the resources for housing and also, the construction of the addition to the convention center. It's very important. As you know, we have to take the bull by the horn ourselves. No one's going to create economic advantages for us. We must do it ourselves and I think taking the time to look to see how we can do that this along with all the community working together I believe we can do that. Because jobs are important for us. The convention center stands to produce around six -- pretty close to 1500 jobs or 1460, thereabout. We take the initiative we help the community through that. In regards to housing in terms of proportionality. I'm proposing that we split it 50-50. That is, allow the city to take on 50%, and then the redevelopment agency take on 50%. And also, we should go back and renegotiate with the state. I mean there are a lot of dynamics in the budget at the state level so I think we should go back and renegotiate. And also negotiate to give them 50% of it per year. Give them half the first year, give them the second half. So that gives you \$18 million each.

>> Mayor Reed: Sorry your time is up.

>> And that cuts down from the amount that you can take from housing. So those are some suggestions I'd make. Thank you very much.

>> Mayor Reed: Josh Endy, Enrique Fernandez, Driscoll. .

>> I'm Enrique Fernandez, representative of local 419. Food service airport stadium and casino workers in Silicon Valley. While our members have been suffering due to the challenges our industry has been facing this year there is no better economic recovery plan than the expansion of the convention center . Everyone linked to our industry, labor and business knows the opportunity this expansion provides. Construction jobs are, hotel jobs, ongoing service jobs, all living wage and good benefits jobs will help our community and our city. Our union has been a leader in San José by partnering with business leaders and maintaining labor peace for the good of our members' future and the city's future. I applaud our hotel industry leaders' vision in making private funding available for the project. We cannot pass this opportunity. The city made a commitment to the hotels and also a workers in San José and should demonstrate a clear vote in favor of options to move the center forward. On behalf of local 19 members I encourage the council to support the direction submitted by councilmembers Kalra and Nguyen regarding ways to bridge the funding gap that exists for the convention center project and return in 45 days with a funding plan. Thank you.

>> Mayor Reed: Diane Driscoll Cheryl Pollack, Robert Van Epps followed by Bill Guthrie.

>> Honorable Mayor Reed and esteemed councilmembers. Mayor Reed, I attended your forum last month may ladd you also referenced meeting with various CEOs from area corporations. I'm sure you gleaned several take aways from those as well as our revenue generators. The convention center is a revenue generator and should be a top priority. May I remind each one of you, thinking out of the box is something that San José does very well. And it has allowed us as a community to succeed. The hotel community clearly demonstrated our commitment and has stain a financial risk. It is now that the city needs to take action by calling for creative thinking around filling the funding gap that exists. As this is the only shovel-ready project, our community cannot pass up the opportunity to get this one right. I encourage council to support the direction submitted by councilmembers Kalra and Nguyen via memo regarding ways to bridge the funding gap and to return in 45 days with a business plan. It is critical in order for our community to succeed. Thank you.

>> Mayor Reed: Cheryl Pollack, Robert Van Epps, Bill Guthrie, Kathy Robinson, Ben field.

>> Mayor and councilmembers, my name is Cheryl Pollack, I'm a fitter in local 393. I've been unemployed off and on for the past two or three years with the economy as it is. I want you to support the convention center, it will do so many things right now, we have so many people in our local and my neighbors, and just, you know, a lot of

people that have been out of work for a long long time and bringing in business and new innovations to Silicon Valley is what we are all about. And as I -- you know, I'm a single parent and I take care of my mom. But you know we're all -- all the kids are coming home. The economy is so bad. And the affordable housing is also an issue because I see so many couples that are -- so many divorce, even in my own family that happened because of economical crisis and stuff that it is really a wash because if we don't move on the convention center, we will have more and more people, that won't be able to affordable their mortgages, they won't even be able to afford their rent. And you're going to have a lot of people and then kids unsupervised is, it's a -- it gets you know kids don't have anything to do they're going to get in trouble you know. We have to invest in our community and we have to invest in each other. And I hope that and I support the Councilmember Kalra and -- can't pronounce their names but the look at it one more time to see what we can do to make it happen. Not only for the --

>> Mayor Reed: Your time is up.

>> Thank you.

>> Mayor Reed: Robert Van Epps, Bill Guthrie, Kathy Robinson, Ben field, dug Jones, Arlene O'Malley Moore. Come on down please front row is open. Go ahead.

>> Mayor city council thank you, my name is Robert Van Epps, I'm an unemployed pipe fitter from local 393 in San José. I've not had a job in this area since October 2008. I had to drive down to the Richard Concord area, I just got back from San Diego working at the nuclear power plant, where my money was spent in that area rather than in the San José area which I would much more prefer. I'm here to support the convention center expansion which would create many more jobs. Studies show that 650 construction jobs would be created, 600 hotel jobs, and in the San José area which we all need. San José unemployment is over 13%. We need aggressive thinking now like the memos from councilmembers Kalra and Nguyen prioritize jobs now for the future for all of us. Happy holidays.

>> Mayor Reed: Ben field, Bill Guthrie, Doug Jones.

>> Mr. Mayor, members of the city council my name is Ben field, I work for the South Bay labor council. I'm here to speak in support of the convention center renovation. The economic benefits of that project are clear. The fact that these are such difficult economic times makes this project all the more important. Our economic problems demand a creative approach to getting the convention center renovation underway and Team San José has proposed such -- one such creative approach. I urge you to adopt the recommendations in the memo by councilmembers Kalra and Nguyen and to direct staff to analyze the Team San José proposal. I also urge you to adopt the less severe approach towards the affordable housing fund contained in the Kalra and Nguyen memo. Even our mild winters remind us that affordable housing is a necessity and the Kalra and Nguyen memo recognizes the unfortunate reality that a loan is needed but also reduces its disproportionate size. Thank you.

>> Mayor Reed: Bill Guthrie, Doug Jones, Maureen O'Malley Moore.

>> Good evening, mayor and councilmembers. My name is Doug Jones, I'm a rank and file member of SEIU United Health Care Workers west and a regional political organizer. I'm here to urge the council to support Councilmember Kalra and Nguyen's memo included in this redevelopment plan. Along with our sister local, local 521, SEIU represents many thousands of health care workers in San José. These hospital convalescent and clinic professionals, affordable housing options in the downtown section for our members and for everybody. We feel that the benefits that would accrue to the health of the community would also be great. Walkable neighborhoods which have easy public transit options will improve the environment of the city and Silicon Valley, and we're also pleased to picture a day when more healthcare workers of all classifications will be able to live closer to the facilities where they work and the patients that they serve. We're supportive of the housing and and again urge you to accept the views offered by councilmembers Kalra and Nguyen. Thank you.

>> Mayor Reed: Bill Guthrie, Kathy Robinson, Maureen O'Malley Moore.

>> Mayor, councilmembers, good afternoon, my name is Ed Reyes and I'm a business representative foster ironworkers 357. Makes good business sense for San José sharing the cost burden between the downtown hotels

and city is financially responsible. The convention center expansion is the kind of investment that will keep generating income and jobs for San José making it good for our citizens and for the health of the redevelopment agency in the long term. The council should support the councilmembers Kalra and Nguyen's memo which prioritize jobs and affordable housing. Thank you.

>> Mayor Reed: Kathy Robinson, Maureen O'Malley Moore, Sal Ventura.

>> Good evening, I'm Kathy Robinson with charities housing. I want to applaud your efforts this evening to try to work collaboratively and find an approach to coming up with the funds to pay the State that they've requested. As an affordable housing developer and advocate, we obviously would prefer that the least amount of impact be felt by the housing department. They do great work for everyone. Including creating jobs and paying building department fees and permits through the development of the homes that we provide for folks. We also support Councilmember Nguyen's and Councilmember Kalra's memo, we think that it is a good idea to take the time to look for other options in order to find the money to put forward to the state. So thank you very much.

>> Mayor Reed: Maureen O'Malley Moore, Sal Ventura, Jim Peterson.

>> Good evening, Mr. Mayor, councilmembers and staff, my name is Maureen O'Malley moor. I'm the project director of destination home. It was really nice to see so many of you at the homeless memorial last week. It was quite moving for those of you who are here and Mr. Mayor, it was nice to hear you say that the only way to put an end to the deaths on the street is by providing housing for the homeless and the at-risk in the City of San José. Mr. Mayor, you've shown tremendous leadership and courage in our efforts to end homelessness here in Santa Clara County. And we can all appreciate the position of the council this evening with your budget struggles and I know you can appreciate the challenges that we have in housing the homeless and the at-risk in our community. I have faith that at the end of the day, whatever the decision is, it will be the right decision because it will be fair an balanced and you've listened to the community. Thank you.

>> Mayor Reed: Sal Ventura, Jim Peterson, JosuÉ Garcia.

>> Good evening, Mayor Reed, good evening, councilmembers. My name is Sal Ventura. I'm the assistant business manager of IBW 332 in San José. Born and raised in San José, my wife and I are raising our kids in San José our young children and we're proud to do so. I have three members who were -- whose names were called who were waiting to speak but they had to wait for another meeting. They were going to talk about jobs. I'm going to speak on their behalf and talk about things a little bit different. First of all there should be no doubt that an upgraded and expanded convention center will be an economic boost to the City of San José. I was mentioned just a few speakers ago. It is a shovel ready project that will create an economic boost right now and once built it will ready good jobs and lots of businesses for our businesses in Downtown San Jose in the outlying areas. Fads, pointed out in comments earlier, city agenda item 7.1, now is the time to proceed with improvements that take advantage of the current projects cost. Right now is the time to take advantage of the improved situation for getting a project -- projects built. As the economy improves, the competition for reputable qualified local contractors will increase. And lastly I'd like to encourage the adoption of the Kalra Nguyen memo, thank you.

>> Mayor Reed: Jim Peterson, JosuÉ Garcia, Stan Taylor, Timon Norimoto.

>> Listen to my friends and neighbors up there and they weren't asking for handout. They are not asking for a chief place to live they're all asking for a job. They're asking for work. Seems to me the solution for affordable housing, which we all love affordable housing is to put my friends and neighbors to work. Back in 1932, T.S. Montgomery donated the land which now sits the civic auditorium. It was a similar economic situation there then. The state government, the federal government stepped up to the plate and they put people to work by building a great public structure that's lasted these many may years, and it is time that we fully fund and accelerate the construction, the renovation of the San José convention center. Now's the time. The plan is in place. The plan has been modified to reflect our current economic condition but it is in place and it's ready to go. The construction costs are down. Now's the time. Our neighbors need work. Now is the time. Events are poised to return. Now is the time. Delay is unacceptable, let's get it done.

>> Mayor Reed: JosuÉ Garcia.

>> Good evening, mayor and city council. JosuÉ Garcia, we are here supporting councilmember Kalra and Nguyen's recommendation to please expand the convention center. Basically we he need jobs. The community needs jobs. We represent over 30,000 members and the unemployment in construction it's over 30%. That means around 10,000 of our members are unemployed. That is not including the nonunion construction workers. The expansion of the convention center will bring that to our community. I want to encourage you to read our front cover article in the New York times and you will see how hard it is to be unemployed. People are having lots of mental health issues. I'll just read something that I highlighted, depression, anxiety, health, mental health issues, 55% have suffered from insomnia, and then quotes, I get major panic attacks throughout the night. This report from the New York times is very good you should look at it. It is very hard to be unemployed. I go to union halls every morning to talk to members, they are having hard times. If it is within my power I'll be happy to help and it is within your power to create jobs by expanding the convention center. Thank you very much.

>> Mayor Reed: Stan Taylor, Timon norimoto. That is the last card I have. If you want to speak now is the last call.

>> Good evening, mayor and members of the city council, and especially my representative Ash Kalra. As an integral part of my faith I've been working for peace and justice for many, many years and for that reason I came here on November 10th to join approximately 300 other speakers in calling for a review of the budget to try to find a way to relieve the burden on those who need affordable housing. I want to thank the mayor for taking input on that request. However I think the proposal is put forward, still lays too much of the burden on unemployed construction workers and on the people that desperately need affordable housing. So for that reason, I support the amendment at proposed by councilmembers Kalra and Nguyen and ask you to please take that into consideration. Thank you.

>> Mayor Reed: Timon norimoto.

>> Hello gen, my name is Timon norimoto, I'm president of the Japantown community Congress and also speaking on behalf of JACL. Thank you for the support of the redevelopment agency of Japantown, we couldn't be here without your support. We wanted to say we support the conclusion of the jam Japantown implementation of the streetscape improvement project on Jackson avenue between 4th and 6th, develop strategies to develop the city corporation yard on 6th in a mixed use project that retains the cultural heritage of Japantown. I want to point out that in may of 2006 we had a town hall meeting and we asked the broad spectrum of the Japantown community, there were about 100 people in attendance whether affordable housing was a priority to them. The resounding answer was yes. repay the state with the housing fund will stop the senior housing project that is currently planned for the corporation yard site. First community housing which is the developer plans to build 73 units of ELA and VLI senior housing. This will not happen if the redevelopment agency takes too much from the affordable housing funds to pay the state. Also while this project is in jeopardy the City of San José has something to lose as well because they will be unable to sell the land to the housing department use utilizing the home funds which is the HUD funds. The reason the housing departments can't use those home funds, it is not allowed to use those funds to land bank, therefore, it is a project that needs to be shovel ready in the next 12 months. Housing department affordable housing advocates and of course the Japantown community to move forward on this affordable housing project. Thank you very much for your time.

>> Mayor Reed: That concludes the public testimony on this action. The Vice Mayor has to leave at about 6:30. Hope we don't lose our quorum before we get done. Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. I wanted to make a motion to move your memo dated December 11th, 2009.

>> Councilmember Oliverio: Second.

>> Mayor Reed: Motion is to move my memorandum. My budget message supplemental memorandum. And I would request the maker of the motion to include in that the additional direction regarding the civic auditorium, coming back February 23rd.

>> Councilmember Constant: That's correct.

>> Mayor Reed: Okay. On that motion, Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. I have distributed a proposed friendly amendment to whatever motion is on the floor. I know there may be another motion coming. The amendment legalities to the allocation of the housing fund money to pay the CERAF payment. And I know what's been contemplated by councilmembers Kalra and Nguyen contemplates another \$25 million reduction in the amount that the housing fund would be hit with to make that payment. What I've offered here is a friendly amendment which would first of all of course require that a cap of 40 million, a cap be set at 40 million from that allocation of the housing fund, and then it sets forth that the staff should explore options that are laid out there in a specific order priority, really for the purpose of trying to assure that these options are tradeoffs here. There are clearly going to be technical and legal challenges with any of these options but really, the discussion and the decision is ultimately a political one as to what we choose to do. And it involves weighing a lot of values and risks. So what I ask the maker of the motion at this time, would be to accept the friendly amendment that I've set out there and I think it's on the screen now. And if it's not accepted I'd be inclined to make a substitute motion.

>> Councilmember Constant: Sam, I just wanted to ask you a couple of questions since it's rather long.

>> Councilmember Liccardo: Sure.

>> Councilmember Constant: I assume that the funds are -- sorry, the funds are listed in order of priority but you don't imagine this to be an exclusive list, right?

>> Councilmember Liccardo: No, not at all.

>> Councilmember Constant: Including but not limited to type?

>> Mayor Reed: Yes, it says staff should explore the following options at a minimum, expecting there will be other options. This came out of discussions that our office had with city attorney's office and with staff about what's likely and what's not likely. It seems as no for instance the issuance of commercial paper may be a viable option. If I could speak briefly to why I've laid out the options I have.

>> Councilmember Constant: Let me ask one more question then you can address them both at the same time.

>> Councilmember Liccardo: Sure.

>> Councilmember Constant: On the idea of the cap, the \$25 million reduction, any reason that we should make that decision now versus having all this analysis and once we have a list of all the different funding sources and all the different possibilities and the ramifications and obligations that we reserve that decision from that time? I'd feel more comfortable with that.

>> Councilmember Liccardo: My concern is this. Away I'm obviously hearing, negotiations with the banks but what I'm hearing is that it may be very unlikely that we're going to be able to find a financial institution that is going to underwrite the issuance of bonds \$62 million in year 1. If that's not really, if it's not realistic from a financial standpoint we really ought to have a very solid plan in place that contemplates a much lower draw of funds from the housing fund. And having an explicit direction in place certainly we could always change our minds on February 23rd, but having explicit direction really gives us the flexibility to know that we don't have to go out with a full 62 million, a 40 million financing is much easier to pull off.

>> Mayor Reed: Let me ask a couple of questions about it because it's not clear what you're proposing with regard to housing funds.

>> Councilmember Liccardo: Sure.

>> Mayor Reed: Configuration, if you take \$20 million off the table you probably won't have a capital project on the table including the convention center that can move forward. I don't think that's what's being proposed.

>> Councilmember Liccardo: No.

>> Mayor Reed: Secondly, I don't think we're talking about 62 million that we're trying to borrow from the housing department, something around the \$50 million range, 50 to 52 million is what it looks now, and I wouldn't be proposing it if I don't think it would be feasible, there's work to be done but not 62 million.

>> Councilmember Liccardo: My apologies mayor, forgive me I'm a bit under the weather now. As I recall, your message contemplated the 75 million take from the housing fund to a \$65 million loan, essentially.

>> Mayor Reed: That's correct. But it's over two years. So 62 million due this year, 13 million next year, and the way the structure looks like it might work is \$50 million off borrowing from housing fund, \$10 million of borrowing from these other funds and hopefully, another \$2 million from someplace else in these other funds. Next year there's still that \$13 million payment which would probably have to come out of the housing fund but what I'm saying is that it would be a mistake to make the decision today, because if you make the decision today, you have taken money off the table. And the staff needs to go out and see what they can do and see what the market will yield and then we can decide how to spend the money and making the spending decisions today I think prematurely puts us in a box that we don't want to be in because I think we want to maintain the flexibility on February 23rd to determine how much money gets borrowed from which fund.

>> Councilmember Liccardo: This isn't contemplating making any spending decisions today. What this is contemplating is, is that we have a plan in place that says we're going to find a source for \$35 million that is not contemplated in the staff recommendation. I understand your recommendation explicitly looks for \$10 million and I appreciate that. This says how do we find another 25 million.

>> Mayor Reed: Right, and the question is what if we don't? I'm saying we don't know if we can do that. I'm saying let's get the money lined up so we if February 23rd, if we find \$25 million additional, wonderful. I think that's great, I think everybody would not want to borrow that much from the housing fund but you have effectively taken money off the table a decision you will regret on February 23rd when you can't fund the convention center or other capital projects because that \$10 million is going to be very important. I'm saying leave that decision for February 23rd when you know where the money is going to come from and what projects will be affected because there is not going to be any extra money in this budget that we're looking at. Hopefully we can find other sources but we haven't found it yet.

>> Councilmember Liccardo: The memorandum doesn't contemplate that the 25 million come out of the top priority item. Simply that this is a priority that we are asking staff to examine options.

>> Mayor Reed: Keep your options open until February 23rd.

>> Councilmember Liccardo: Understood. Here is another issue that's really driving my concern here. When the memo came out from Leslye Krutko, a week and a half ago, it is apparent that we would have extraordinary \$28 million in interest cost doesn't include issuance cost, it doesn't count whatever cost we may incur from having to restructure all of these housing projects. It is my understanding that we can't get any financing to pay for simply a loan to cover Ceraf, we'd actually have to get the financing for individual projects and then we'd have to swap out funds from individual projects and all of this is going to be incredibly costly and by the end of the day we find we may be paying out a dollar in cost for every \$2 we're borrowing. We make it a priority that we find other sources of funding now that be our first choice our primary option contemplate \$65 million or more.

>> Mayor Reed: That I agree with.

>> Councilmember Liccardo: Right.

>> Mayor Reed: That our first choice ought to be to do other things but I do know that staff has done a lot of work and the range of choices is pretty narrow so we can't assume that just because we tell staff to think outside the box and go find \$25 million that they are going to be able to do that.

>> Councilmember Liccardo: I don't pretend they are but we haven't had any discussion about commercial paper and I think that's an important option for us and when it's much less expensive than the option of going out with fixed rate bonds.

>> Mayor Reed: It is certainly less expensive. There are several different ways it could possibly be done but whatever the decision is made on any kind of a package of borrowing has to come back to the council for approval. So whatever we do today doesn't approve any borrowing. It gives direction to staff to continue working on it hopefully to find a solution. And to bring it all back to us because there's no borrowing that's going to happen between now and February 23rd. I need to ask staff about the sequence of the work that needs to be done to talk about it because we're not making a commitment today to any structure. We don't have a structure, we don't have commitments from lenders, staff's working on that.

>> Councilmember Liccardo: I'm aware of that mayor. Again I'm not choosing a path but the important thing we identify what our primary path is going to be. If our primary path is going to be that we're going to be making this enormous loan happen from the housing fund we're committing ourselves to a much -- it's going to be much more difficult to change horses in mid stream, that's a more expensive way to go and as I think others have said, more damaging to the housing fund.

>> Mayor Reed: Let's let staff get in place whatever we can do in the borrowing field.

>> Leslye Krutko: Thank you, mayor. Leslye Krutko, director of housing. We have been working for at least the last couple of months on a borrowing that would be a variable rate issue and it would be sized at about \$50 million. We're waiting right now to have an answer on that. We don't have an answer yet on whether or not the bank that we're working with will lend us those funds. We expect to receive that information within the next week. And depending on the answer, then we would decide what we could do next. Should say that the bank is only willing, as Councilmember Liccardo said, to lend us funds for projects. And so it would require that we exchange those moneys for cash that we have in hand. And at this point the mechanics of how we could do that we have not figured that out yet. So giving us more time is very helpful to us.

>> Mayor Reed: Thank you. Councilmember Liccardo, was that it on your motion? I think I took away from Councilmember Constant's questions.

>> Councilmember Constant: No, that is okay. I think Sam I have absolutely no problem from the second paragraph down. I agree with you that we should make it explicit that taking all the money from housing is not the optimal choice and we should be looking at everything but I don't necessarily agree with the verbiage in paragraph 1. So I'd be willing to accept a friendly motion from paragraph 2 down, if the seconder would agree with that, and incorporate in the motion the preference, but not necessarily the specific direction that you have here. Because I think we should look at everything, we should make those decisions in February when we have everything on the table. I want to get that clear before we go on to other topics.

>> Councilmember Liccardo: Sure. Maybe I could clarify. The word must is in there because I anticipate a motion which may be coming from councilmembers Kalra or Nguyen regarding the additional \$25 million. That's a reflection of what's in that motion. I believe that's probably an appropriate direction. Seems to me that going out with the scale that we're going out at, may not be -- we may -- I think we're likely to find that's that it's intolerable in terms of just putting affordable housing needs aside for the moment, just the enormous cost it brings. When I'm given the direction, when I use must I'm sorry in the first paragraph it's a reflection of what's in the memorandum already. That I understand it.

>> Councilmember Constant: The alternate memorandum?

>> Councilmember Liccardo: That's right.

>> Councilmember Constant: So for these purposes the motion that's on the floor I would like to just accept paragraph 2 so we do a full and thorough analysis of everything because I think we should have everything looked at, looks like I'm getting an okay.

>> Councilmember Liccardo: That's fine. I mean ultimately, we're going to be talking about where the number is going to need to be based open what's available. There are several folks that voiced a strong need to push this number very far down and I think I'm pretty clear on where I am on that issue.

>> Councilmember Constant: Thanks Sam, I want to make sure that we're not closing the door on convention center expansion. I think that's really a critical project for us in the city.

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: Thank you. First of all I wanted to thank the mayor for his message. I think that it really takes into account our current situation at the same time looking at various ways to address our budgetary constraint. But I think it's short of fulfilling our commitment to safeguard our priority to continue pursuing affordable housing needs for our residents. So in that regard I would like to put forth a substitute motion and that is to approve Councilmember Kalra's and my memo dated December 10, 2009. If I can get a second, thank you.

>> Mayor Reed: Second on the motion you want to speak tot motion Councilmember Nguyen?

>> Councilmember Nguyen: Yes, in our memo we are asking that the mayor's budget message be amended to direct the city manager and the RDA director to prepare an analysis of financing options for the convention center. And I thank Mayor Reed for the recommendations he set forth in his supplemental memo directly referring to funding sources and strategies for the convention center expansion. I think that staff should also carefully consider the funding strategies that have been proposed by Team San José in a letter dated December 14, 2009 which was previously submitted for staff consideration. The convention center expansion can one of our City's most important projects and I believe that Team San José's registers are pragmatic given the current economic challenge. Councilmember Kalra and I recommended that the city and agency look at alternatives and reserves to pay the state from now until mid year budget review in February 2010 specifically to require a loan from the affordable housing funds of no more than \$40 million. We believe this is a practical way of approaching the state take and other hardships that the agency is current facing RDA as is it would leave a huge number of San José residents with no affordable housing options and the lack of affordable housing would have a significant hardship for low income households and will eventually prevent them from a meeting of basic needs such as nutrition or health care. I think there is still need reconsider and reevaluate how the city will approach the state take of RDA funds. We should defer a final decision on any loans from the 20% affordable housing funds to pay the state until the mid year budget review in February so that we can still look at other alternatives and options. And so I look forward to my colleagues supporting my memo as well as Councilmember Kalra's thank you.

>> Mayor Reed: Thank you, I have a question. First I need to have you explain to me the difference between your recommendation and mine. Because when I read the text of your memo, you're talking about exploring how to fund in. Evaluate alternative funding sources for the reminder of the state beyond the 40 million. Use this time to February 23rd to do that. We should seriously review other funds to determine if the loss to the housing program could be reduced to 40 million. I agree with all of that, we should do all of that, I don't have a problem of setting a target of 40 million. So the language of your memo and what you've said to me doesn't say we're taking money off the table. We're just setting targets and we'll may the decision in February, what I think you said. I just need to know whether you are proposing taking \$25 million off the table.

>> Councilmember Nguyen: That's not what we're proposing, Councilmember Kalra can speak to this as well since we both drafted this together. But more importantly for me is looking at the affordable housing funding and making sure we're not borrowing more than \$40 million. I think by doing that we're taking away the priorities that we constantly tell our residents that affordable housing is a top priority for us and so our memos pretty much speak to that and if Councilmember Kalra has any other comments, feel free to join me.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you mayor, I want to thank all the people that came out to speak especially on the needs of the homeless and affordable housing. To follow up on Councilmember Nguyen's comments in regards to our memo I think the difference is I think mayor you're right, it's not necessarily an either-or proposition, but rather than setting a target of \$65 million and seeing how well we can do in trying to get lower, setting the \$40 million in the year 1, as the target, and seeing how we can achieve that I think is a better strategy. Because it puts a clear emphasis on what our goals and priorities are. Additionally in regards to the rest of the motion, item 1 speaks to specifically the Team San José proposal. So it doesn't exclude the work that's being done with the technical advisory committee. It just also does an analysis of the proposals being put forth by Team San José. In terms of the memos that Councilmember Liccardo put forward, it doesn't preclude any of that from happening as well, which includes the analysis and the detailed analysis. Just a note though would be that as Councilmember Constant pointed out that it's not exclusive of the items listed here but that's a starting point. There's a list of priorities there, particularly number 1 looking at the RDA budget itself would be conclusive of evaluating contracts and encumbrances that are existing so contracts and agreements that we have that are encumbered and otherwise, but we should be knocking on all doors and seeing, we're asking our bargaining units to open up contracts and see what they can give back. It doesn't hurt if we can knock on some other doors and see if there are other people that are willing to sacrifice for the city. The worst that will happen is that we will get doors slammed in our face and it won't be the first or last time that will happen. And I think also going forward, if there are opportunities for the redevelopment agency through contracting, for services that are necessary and planning that we should look for the laid off city planners that have been laid off. We certainly should think as a team as a city and we know there's some good people that got laid off, qualified people that we've all talked about and complimented and so there should be an opportunity for us to also look to those individuals see if we can hire them back into service even though it's a contract through the redevelopment agency. Ultimately mayor, it's back to the whole completely track there, in that yes, we're putting together a proposal here to look first as Councilmember Liccardo put forth, to look at trying to achieve the \$40 million number and acquire the funds from other sources and look under every rock to find it. But it doesn't mean that we can't also prepare for the eventualities of what's going to happen. The bottom line is we don't want to be stuck in a box as you said, one box isn't any better than the other. We should at least start with the box that allows us to fund our affordable housing or at least keep the program going forward. So I would ask for a support of the motion put forth by Councilmember Nguyen and myself. I think it gives a higher priority to try to target funds that will preserve some of the affordable housing funds, I would certainly ask Councilmember Nguyen to be open also to if Councilmember Liccardo wanted to offer his amendment or we can certainly just add it right now if Councilmember Nguyen is okay with that.

>> Councilmember Nguyen: Yes, that would be fine. I actually was going to include Councilmember Liccardo's funded amendment with a motion.

>> Councilmember Kalra: Okay.

>> Mayor Reed: So the substitute motion is based on a memorandum from Councilmember Kalra and Nguyen along with Councilmember Liccardo's friendly amendment. So I have a question for staff. If we vote on this are you going to look for \$40 million or are you going to look for \$50 million? I need to know if we're leaving \$10 million on the table based on your understanding of the direction here.

>> Leslye Krutko: Just to clarify whether or not the City Manager and I should respond are you talking about the total amount that we'll look for or the total amount we would borrow?

>> Mayor Reed: I'm talking about the total amount of \$50 million that we're attempting to borrow through the variable rate process that you described earlier.

>> Leslye Krutko: The borrowing that we're looking at is a \$50 million borrowing. So if we were to borrow -- if the council were to decide whatever they would decide, the remainder would go for projects.

>> Mayor Reed: So we're not going to leave \$10 million on the table that we could borrow, not based on this decision anyway, but a decision as to how to spend that money? Is that your understanding that if we approve this motion you are going to get the 50 million if you can?

>> Leslye Krutko: We are attempting to get the \$50 million, yes, we.

>> Mayor Reed: I'm talking about leaving money on the table because if edon't have that money we may regret not having taken that opportunity to spend it on affordable housing for example. Councilmember Constant.

>> Councilmember Constant: Thanks mayor. In looking at the memo, you know, I understood what I just heard from staff. But I think when you read the memo that's on the table it does put that cap there. We always go back to what's in the record and what's in the memo and what's in the motion. And I think it will be back at that cap. But I think we are going to have that 10,000 taken off the table.

>> Mayor Reed: 10 million.

>> Councilmember Constant: 10 million. I wish it was 10,000. Just wishful thinking. I worry about that. I really think that the first motion is the best because it leaves all the doors open. And I heard Councilmember Kalra say that, we want to leave the doors open. I think with the wording of this we start to close some of those doors and we need to keep it open. I do think that it is appropriate to look at -- excuse me -- the financing options that are proposed by Team San José in relation to the convention center expansion. We should be looking at everything and fully vetting every single one of these proposals and not limiting in any way. And kind of goes back to when we were talking about the design-build, looking at that really thoroughly in relation with the convention center. All those searches and analysis should be all conclusive and I just worry that we're starting to close the door on this. I think the original motion based on your memo with the slight amendments provided by Councilmember Liccardo, I think gives us that opportunity. So I just urge everyone to vote no on this one and vote yes on the other so we can have the largest, broadest analysis that we can have.

>> Mayor Reed: City Manager wants to add something.

>> City Manager Figone: From my perspective and just to add onto what Leslye said, the direction I'm going the way to psych the 50 million but with the maximum flexibility possible in order to present to you your options for lowering that amount if feasible. I think it's going to be very important that we have the flexibility to go figure this out and to do the borrowing at the lowest cost possible and again bring you back the options. Especially when you layer in the convention center acceleration request, I am concerned about perhaps competing sources of funds and so, again, I would ask we be given the maximum flexibility in coming back to you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Just so I understand this flexibility Deb, my understanding is regardless of which positions motion were to pass, staff would be going out and get the max housing amount they could question I understand is about 50 million is that correct?

>> City Manager Figone: And Leslye can correct me if I'm wrong, we are looking at a variable rate which will give you maximum flexibility.

>> Councilmember Liccardo: I understand there is a cap that we are facing up against that will push us into the fixed rate world, is that true?

>> City Manager Figone: I don't know that we're there yet. I think you were --

>> Councilmember Liccardo: Sorry to do that, I think your voice is failing, you sound like I feel right now.

>> Leslye Krutko: Yes, basically with our portfolio which we think is reasonable of 50 million in variable rate debt. In borrowing more than that, in getting to the point of borrowing more than that it needs to be fixed rate and not variable rate. We need to borrow more in addition to this 50 million. We have two problems that we have, one is that we have a line of credit that is about 45 million left that we need to borrow funds to try to stretch that out. It is now a five-year loan with \$10 million annual payments. We also have a letter of credit that expires next year, and we need to refinance that, and get a new long term loan, in order to do any additional borrowing. So those

are two things we have to do anyway. And those will need to be done on a fixed rate basis. So in order to do any borrowing we have to fix out those two other loans.

>> Councilmember Liccardo: And that is going to get very expensive.

>> Leslye Krutko: It will be expensive but we need to do that in order to borrow.

>> Councilmember Liccardo: Okay, thank you. I guess, then, Deb, I'm just trying to explore this issue a bit more about flexibility. If the motion from Councilmember Nguyen passes, it seems to me if we went down the road we can borrow as much as we ask borrow through the bobbed markets and then we come back and decided we don't have any palatable options, we still would on February 23rd, the flexibility wouldn't we, to say we're going to borrow 50 million instead of 40 million from the housing fund, is that fair?

>> City Manager Figone: That's what we would seek to do in terms of the council approving the transaction, that would be your -- you know the point in time where we'd have to commit but I think we need to explore the maximum borrowing possible.

>> Councilmember Liccardo: It seems to me under the same Florida formula we are heading.

>> Mayor Reed: City Attorney.

>> City Attorney Doyle: Does this include the mayor's comments about the civic and having that deferred until February 23rd?

>> Councilmember Nguyen: Yes.

>> City Attorney Doyle: I just wanted to mention one more thing, there are a lot of different interpretations of what shovel ready means. But under state law there is an entire process that we have to come up with to do a design build including some specifications. In addition we're in licks on the validation action. We have a March 8th hearing date where we expect to get a judgment but that's the the courts are ten judges down and that's the earliest date we could get.

>> Mayor Reed: Before you do that, the executive director had a statement.

>> Harry Mavrogenes: Yes, I just wanted to echo what the city manager said, and I would urge that you give her and myself the maximum flexibility. Because I understand the pressure she faces with the other side of this, the convention center. So to be able to do the borrowing with the maximum and come up with options for you you ultimately will make these decisions but I don't think either of us wants to have our hands tied too much, the larger amount we can go with the better and we will bring back to you something that makes sense.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. I'm listening to the statements and appreciating everyone answer comments. You engaged the community around I had a balanced community in the room that talked about what are the priorities, economic development housing, et cetera, you laid out a bunch of factoids and we're going to make a difficult choice in February who knows if we'll punt again for some other reason. I can't support the substitute motion at this time and then also concerns me about on the friendly amendment all the items that are really brought up there, a lot of them are just pure core services. We had a lot of deferred maintenance infrastructure in our sewer system. That's not something you can forget about once it bursts. The voters paid a parcel tax, they didn't pay a parcel tax to pay for other things we might deem important. In this case, there are folks on the council that think affordable housing would have that priority. I have some concerns about that. We'll really be tackling that come February but I will stay to hear your budget message.

>> Mayor Reed: I just want to clarify that the substitute motion includes the budget message work, the approving of the proposed contracts payments with the provision of bringing back the piece on the civic auditorium. And then deferral of the capital and operating budget. It contemplates all items, 8.3, 8.4 and 8.5?

>> Councilmember Nguyen: Thank you.

>> Mayor Reed: That's what I thought. Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. It seems like there's very little difference between these proposals, but I just want to make sure. Because I'm very supportive, I'm supportive of obviously protecting affordable housing but I want to talk about the convention center. This is absolutely essential that we get this product ready and however we determine it's shovel ready, it's absolutely critical. I want to make sure there is the flexibility, hear you just talked about maximum flexibility, I'm hoping we have if same flexibility, I'm thinking we do. We're not making a determination on which route we're taking, we're just talking about going out to borrowing and making sure we have that amount available, I want to support the substitute motion .

>> Harry Mavrogenes: The housing department is going to go out and get as much money as they can. It will be your choice to decide how much you can spend. Limited us in the ability to do the convention center. So to the extent we're going to go out and seek the maximum amount from the housing funds I think it's going to be very important to this.

>> Mayor Reed: We have a substitute motion on the table, I see no other requests, all in favor, oppose, Oliverio, constant Reed, that passes on a 7-3 motion with Vice Mayor Chirco absent. So the budget message is approved as amended. That takes care of 8.3, 8.4 and 8.5. I think the only thing left is open forum. We have a few cards on open forum. Tina Morrill, David Wall. I see David Wall come on, go first.

>> David Wall: Being the last meeting of the year, I wanted to thank all of you for your service to the city this year. Even though most of your decision were wrong. I also want to add another name to the dedication for tonight's meeting. I want you to consider please, adding Esther de Mattei's fame a long time San José resident to this and make the necessary written instrument to the family. As to James Fox whom I only met one time in my life, I can understand why you miss him so much. Because on February 18th, you clipped him for \$25,000 in a liquidated damages issue in which nobody was harmed. And I maid good about it. And I feel bad about that but I guess that's why you really miss him. Thank you again, and above all, thank the San José police for all their efforts in my neighborhood.

>> Mayor Reed: I think Tina is not here so we are done. We are adjourned. This is the last official council meeting of the year although everybody is invited to attend the budget stakeholder engagement meeting Thursday morning 9:00 in the wing. We're adjourned.