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City of San José council meeting. [Gavel]

>> Mayor Reed: Good afternoon. I'd like to call the San José city council meeting to order for August 18th, 2009. We'll start the meeting with the invocation. Councilmember Nguyen will introduce the invocator.

>> Councilmember Nguyen: Thank you, Mayor Reed. Good afternoon. It is my pleasure to welcome the venerable Rom Bi and the monks from the Wat Kamra Ramsey Temple and the Vat Dharma Samar Ki Temple here today. These two temples serve as the central locations for conducting ceremonial activities and traditional events in the Cambodian community. They also provide ongoing programs such as classical Cambodian dance, literacy classes and religious counseling. It is an honor for me to have the venerable Ram Bi here and his monks to deliver the invocation today.

>> May the great blessing to our great mayor and all the city council members and the distinguished guests. [Chanting]

>> Mayor Reed: Thank you very much for helping us open this meeting. Appreciate it very much. Next item is the pledge of allegiance. Please stand, everyone. [pledge of allegiance]

>> Mayor Reed: First item of business is the orders of the day. Item 2.11 should be deferred for one week. Any other changes to the agenda order? Is there a motion?

>> So moved. Move to approve.

>> Mayor Reed: Motion to approve the orders of the day. Do we get a second? Councilmember Campos, that's the next item, okay. Was there seek on the order? Yes, there was, Councilmember Nguyen. Motion is to approve orders of the day. All in favor? [ayes]

>> Mayor Reed: Opposed, none opposed, those are approved. Closed session report, City Attorney.

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

>> Mayor Reed: We'll now take up the ceremonial items. I'd like to invite Councilmember Chu and representatives from the Altera Corporation to join us at the podium. Today we're presenting a commendation to Altera Corporation, certified as Santa Clara County's first green semiconductor company. Altera has been headquartered in San José since 1983, making them a pioneering green company in San Jose. They just happen to be located in Council District 4. I got to go out to their 20th anniversary when I was a councilmember, and Councilmember Chu is carrying on the tradition. Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. I like to thank my colleagues and the mayor in joining me to commend Altera Corporation for their commitment to promoting San José's green vision goals. Altera Corporation is a company in North San José that employ more than 2700 people worldwide and continue to build through its new technology and innovative thinking here in San José. Since 1983, Altera corporation has been an industrial leader in programmable logic solutions. In 2004, Altera Corporation was certified as Santa Clara County's first green semiconductor company. Their solution helped optimize energy output, reduce operation and maintenance cost, contain risk, and increase return on investment.

Altera Corporation has gone green since 1983, each year implementing additional recycling and conservation within their company. I would like to thank Altera Corporation for their innovative technology and continued effort to be environmentally and socially responsible. I had an opportunity to take a tour in July thanks to Barbara and was impressed with their disaster preparedness effort. It is great that we have companies like Altera here in San José making a difference in our city as well as throughout the world today and with future generation. Here today to accept on behalf Altera Corporation is the president and CEO, John Dana. John.

>> Thank you very much. Thank you. Thank you very much. Mayor and councilmembers, thank you very much, on behalf of Altera for this recognition. Altera started 26 years ago in San José as one of the pioneers in programmable logic. 26 years later we have a headquarters campus that we own in San José and are very proud of are one of the leaders in the sector of programmable logic in semiconductors. So again on behalf of Altera, we would like to thank the City of San José and all of its employees for truly, making it a wonderful place to live and work. We appreciate the commendation. Thank you very much. [applause]

>> Mayor Reed: We joined up here by Paul Krutko from our Office of Economic Development. This is part of our economic development efforts to recognize our leading companies. For our next item I'd like to invite Councilmember Herrera and Lucia Huang to join me at the podium as we commemorate Lucia Huang for her efforts creating and administering a grant system to support aquatic programs at Alum Rock Union Elementary School District. Councilmember Herrera has some more information.

>> Councilmember Herrera: Thank you, mayor. And we also have Sue McAllister of West Coast Aquatics here, who is the head coach -- or actually not the head coach -- West Coast aquatics. So I want to talk a little bit about this amazing young woman we have here, Lucia Huang. She is a very accomplished leader at Evergreen Valley High School and in general in the District 8 community. We asked her to come here today to acknowledge her work with West Coast Aquatics to provide swimming classes to underserved communities. Before I talk about that I'd like to share briefly some of Lucia's other important accomplishments and mention some of the many ways she contributes to our community. Lucia is a senior at Evergreen Valley High School and a national merit semifinalist, a vice president of her school's chapter of the California Scholarship Foundation, which helps organize 20 volunteer events each year. She's founder of the International Food Club at Evergreen Valley High School. This group hosts regular events, where members prepare an average of 100 bag lunches and deliver them to local homeless shelters. She hosted a fund raiser for Feed the Children, which provides food to needy children throughout the world, and as a member of West Coast Aquatics for nearly seven years, Lucia has become a West Coast Aquatics senior gold swimmer and a member of the national team. But the reason we asked Lucia to join us today is for even more things that she's done. She's dedicated so much of her time to providing enriching athletic opportunities to local children, she volunteered her time with West Coast Aquatics, a wonderful organization that provides swim classes and competitions for a diverse group in San Jose.

To further their diversity goals, Lucia successfully applied for a U.S.A. swimming diversity grant for which West Coast Aquatics received \$4,000. With this grant Lucia was able to help implement a program that provided swim lessons to middle school students in East San José. Lucia's volunteer efforts enriched these children's lives in many ways. Her efforts provided athletic opportunities to kids that might have otherwise receive them, promote healthy lifestyles and self-confidence. They prepare these children for high school swim tests. I'm very proud of Lucia's commitment and the community and her many accomplishments, and our community is grateful for all her volunteer efforts. Now if we can have Mayor Reed and -- I want to present this commendation on behalf of the entire city council. I'd like to present you with this commendation. Thank you. [applause]

>> Mayor Reed: Next I'd like to invite Debbie Hendricks of Community Health Charities to join me at the podium as we recognize the generosity of many of our City of San José employees who participated in a combined giving campaign.

>> Thank you very much, Mayor Reed. On behalf of Community Health Charities of California, and the 125 million people that face a life threatening health condition, disability or chronic disease, today I'd like to present an award to the City of San José to Mayor Reed, and also to City Manager Debra Figone, for their ongoing efforts in giving campaigns. We appreciate the partnership that the city has with community health charities and their ongoing efforts and we also really appreciate the fact that this strengthens the community and that it's an effort that is made by the staff, and the City of San José, and they've done a tremendous job at this. So this is for the calendar year 2008-2009, and we thank you again for your efforts. [applause]

>> Mayor Reed: Thank you very much. [applause]

>> Mayor Reed: We'll next take up the consent calendar. I have some requests to pull items from the consent calendar. Councilmember Pyle wants to pull 2.5. Councilmember Nguyen had a request --

>> Councilmember Nguyen: 2.9, please.

>> Mayor Reed: 2.9. Are there any other items to be pulled? I have a card from the public requesting 2.6. Any others? Okay.

>> Move approval.

>> Mayor Reed: Motion to approve the balance of the consent calendar. All in favor. [ayes]

>> Mayor Reed: Opposed, those are approved. Councilmember Pyle, you would like to speak on 2.5, national, international public relations outreach agreement.

>> Councilmember Pyle: Yes, Mr. Mayor, I would. I would like Paul Krutko to come forward also. He can't the questions better than anybody else was. I can truly understand why an objection was made, because we all want to save money in regard to impending doom that will befall us, in relation to away we have to cut. But I think this is absolutely not the place to do it, for many, many reasons. Paul you can give us some answers as to why global fluency the most cost-effective use of the \$120,000?

>> Paul Krutko: Thank you, Councilmember Pyle. Good afternoon mayor, members of council. I've broad two slides because I anticipated, we heard some questions of council. There's this two. This effort grew very much out of the economic development strategy the council adopted about five years ago. The

need for it has been reinforced as we are going out and talking to businesses again, as the council knows, we are revitalizing, we've invigorating the economic strategy. And our business community repeatedly says to us, that -- and I'll just quote to you here some of the things we hear from them is that San José -- this comes from our CEOs -- would benefit economically from a strong, clear image regionally, nationally and internationally, and that raising the visibility and stature of our community will help companies recruit and retain talent and investment in our area. So we crafted an effort that we thought would be very, very cost effective in comparison to what other cities are doing and this is just the sole slide that I have to share with you today. That what we decided to do is, and I'll show you the next slide after this, what other -- what another city does. That we could not afford an advertising campaign, a direct marketing campaign, like many cities do, to recruit business, to recruit investment here. So what we did is, we tried to do something that we think is relatively unique and creative and that is we look with a firm that looks to take our story, and put that story in terms of the hands of people writing major articles, and newspapers and publications around the country. So we're getting sort of a shared support from what we're doing from others who are interviewed in those articles. And to date, this year, just to give you a little flavor of what the slide is indicating, this resulted in 40 significant articles with a very significant circulation, and media impressions. The cost-effective piece that we would want to share was that when we did an article on the Wall Street journal on the top of the front page, that becomes a permanent archive record that anybody can pull up about San José from that time forward. To -- we've had four such articles in the Wall Street journal and New York times, a single-page ad in the New York sometimes and Wall Street journal is about \$100,000. This effort is -- we're asking for about equivalent to that amount. We've had 36 other placement, some in such publications as fortune and in entrepreneur magazine. So we think it is a very cost effective approach to get the word out in a very positive way. These articles tends to have quotes in them like from clean technology entrepreneurs, San José gets it. San José is a good place for business. It's a place where we're very pleased to be located in. Why we chose this effort, councilmember, and this is the only other slide I have, is we're faced with really incredible competition from other jurisdictions. This is one of our main competitors, Austin. It's a little hard to read. We pulled it up. The quote that I want to share with you is that on top, where we look at the chip and the board there, that quote basically touts their patents. As the council knows, as a city we leads the nation for years in patents. But they tout their patents. They say, the valley may have come first but our silicon hills are nicer. We are taking a very cost-effective approach. We understand what we're faced with but our competitors are spending millions of dollars to essentially lure our companies and our talents and our businesses to their locations. So it is for that reason that we crafted this program because we felt much like a political campaign if we don't define ourselves, others define us. And they do. Our business climate is very much negatively talked about in the national press. Our cost of doing business is talked that way. So we feel we need to be putting our own message out.

>> Councilmember Pyle: We, as councilmembers, all know what it is to conduct a campaign and the need to get the word out and that's precisely what we're doing. You can tell us more about what neighboring Bay Area cities might be doing in this regard?

>> Paul Krutko: We do know, we have done some surveys about that and we know San Francisco is spending nearly \$1 million in this kind of effort. We also know that some of our other competitors in this sort of clean technology space, San Diego for example, is spending in the area of \$5 million, Washington, D.C, their general area spends about \$10 million in this regard. So we are trying to be very cost-effective. This program, as all the programs that you supported, in this last year's budget on economic development, had cuts, as did all the other departments. These were dollars we already had allocated for this purpose. The contract had expired, or due to expiring so that's why we're bringing it forward for approval today.

>> Councilmember Pyle: And you mentioned already that a full-page ad in the Wall Street journal would be at least this amount. That's one shot. This group gives us much more coverage than we could possibly get for the same price. So how does that compare to the coverage that we received through, for example, the last year?

>> Paul Krutko: Well, we -- one of the things that was really important for us to do, is it's a very complementary effort with the overall messaging efforts that the city has, that in terms of council's direction that Michelle McGurk is coordinating not only the city efforts but the convention and visitors bureau and the downtown association. One of the things we do is we create the content and we create the materiality and what global fluency does for us is they shape that material and they have the very significant media contacts that we don't have. In fact, an example today was a referral that came in from

auto-desk that is connecting us with a request from "Time" magazine to do a specific story about what we're doing. So that's the piece that we don't have. We don't have a media presence in New York City or in Washington, D.C. They do, and so they are taking our story, getting it into the hands of the right people, and then what happens is, we have many, many voices in the city to tell the story from Jim Helmer to Katy Allen to others, who tell the story of our success in terms of economic development.

>> Councilmember Pyle: So basically it goes from your team to their team to the world.

>> Paul Krutko: Right.

>> Councilmember Pyle: And not only does it affect the City of San José, but isn't there a residual effect for companies that are already here? I mean it helps them to grow their businesses because they're more recognized in where they live. And it helps to employ more people. So the ultimate benefit is all the way around.

>> Paul Krutko: Councilmember, I would agree with that. Our sense of this is that in talking to our companies, they have told us a number of times that it's very, very important to them, as some of them, you know, are not headquartered here. Some of them have division here. They say it's very, very important for, when they're going back for investment decisions, that there is a strong positive image about San José, and what we're trying to accomplish. So they have told us that this type of effort is something that is desperately needed. It's also desperately needed on the talent attraction side, that the folks believe this is a good place to live and work and raise a family and that is sort of how the message hangs together.

>> Councilmember Pyle: And do you think this helped to attract emergency league baseball here? (laughing).

>> Paul Krutko: Councilmember, we were saying, we knew we would be, my staff and I were talking before we came here. And one of the things that we often share with each other and you may have had -- some many of the councilmembers may have had the same experience. Many times you find when you're talking about San José you have to start from square 1. You have to say, "We're the 10th largest city in America, we're the third largest city in California." The census area is called the San José-San Francisco metropolitan area. This is not the San Francisco metropolitan area. We have to start from that point. A former City Manager would tell us this story all the time, about talking to executives from Bank of America, and they couldn't place where San José was in the country. So that was why we started this effort. We have to keep doing it. And so to answer the question you had about baseball, the conversations I've had with Mr. Wolff, he said it's important that the rest of country know that San José is a significant community that would be a great home for major league baseball. He'll do the work with the owners and all that. He just thinks that it's important that the rest of the country know about us.

>> Councilmember Pyle: Well, thank you. With that, I'll make a motion to move approval of the staff report and then speak to the motion.

>> Councilmember Herrera: Second.

>> Mayor Reed: Okay, we have a motion to approve the staff report. Councilmember Pyle. If you want to speak to the motion, because we do have some others.

>> Councilmember Pyle: I just want to say, I've done a fair amount of traveling. I think I tell that you all the time, don't I. And I don't want to keep harping on it. But I can not tell you the numbers of times I've gone somewhere, and they say "San José?" But I want to share some success with you. This past summer, when I went on a river cruise in Russia, believe it or not, there were only five couples -- five American couples. But three knew where San José is. So we are making progress, and I certainly would not want to regress on that. Thank you, Mayor.

>> Mayor Reed: Thank you. We have some cards from the public on this but we'll get to that in a minute. We have some councilmembers who want to speak on this first. Let me just add, I have been skeptical on this contract and when it first came to the council I voted against it because I thought the goals were too vague and we wouldn't be able to track the success. But we have evolved from then to now. And we have real performance and performance measures that I think are important, and so I'm going to be supporting the motion. Another thing that's changed is, we have a communications working group that the council has directed all of our marketing efforts be reviewed, so that we can have a coordinated effort. And the global fluency contract actually is sort of leading the way in terms of performance measures, what are you going to do and how did you do kinds of measurements. So I think it's important contract that gets us a lot of leverage for the money that we spend. Council has placed a very high priority on economic development as a way to grow our way out of our long term structural budget deficit. This is a piece of it, in attracting new companies to San José. And I think -- you didn't

mention Borgata Recycling. I was out there for their opening. But I think they're one of the companies that we can tie directly to this kind of work, and there's some others, as well. So although I was a skeptic at the beginning, I'm going to support the contract now, because I think we've seen some actual results as well as just plans. Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. First I would like to thank the office of economic development for the wonderful job that you have been doing. I felt that our in-house staff definitely have the talent and the capable of building relationship, and that we do not need to contract-out for the public relation outreach. Just to be sure, I wanted to emphasize that I am very supportive of economic development, and I think that funding could be better spent on stimulating economic development locally. Such as subsidizing the convention goers who are already here in town, so we have real people who benefit locally, and that will also help with the local economy, instead of like a shot in the dark. So I will not be supporting the recommendation.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I'm interested in hearing what the public has to say. But I just wanted to, right away, show -- let folks know that I am supporting the motion. I think with all respect to what Councilmember Chu just said, and with great deference to our staff, because I think they do a tremendous job, relationships like this with media are built over years, and global fluency specializes in that. I worked in the private sector before I came here and I've been skeptical of public relations efforts and I think they're very hard to define and describe to the public sometimes. Because we're talking about articles appearing in newspapers. But the cumulative impact, if you have a company that has the kinds of relationships that global fluency appears to have, is worth tangible results and that's why we've seen some of the economic benefits. I support, and I've been on records, there's nothing new, I support economic development. I think it's very important, this can be one of the ways that we come out of this recession. It brings jobs. And I just had a couple of questions. If we discontinued this relationship, Paul, what -- how long would it take, or I guess what would we lose in terms of the equity we've built up? And how realistic would it be to restart it?

>> Paul Krutko: Thank you, councilmember. I think that you're right, that what we have done, and I want to again, being very respectful of the council's concerns about where we stand budge airily and how we stands on resources, we've put a little towards this in successive years. The reason we're before you, is because we have done that for successive years, and we get to a point where we pass the City Manager's signature authority so we need to bring the continuation agreement in front of you. So we've invested with Global Fluency on preparing them and arming them with information about San José. And what we're currently doing. And so you're right. The work, you've developed a team, you're working well together. You can communicate quickly when opportunities present themselves and be very responsive. So I think we would lose if we discontinued this effort. Because it is core to, in terms of the message being piece, to what we're doing across this coordinated effort with Team San José, and the downtown association and others. He we've put in a lot of extraordinary effort into this. And it would take us quite some time to re-start such an effort and rebuild the relationships that we have now. Because once we work the relationship of Global Fluency, then we begin to have those relationships as well, so --

>> Councilmember Herrera: So what kinds of message -- I mean I'd be afraid the kind of message we would be sending if San José gave up, we are not going to be a player, we're not going to be competitive. I'd worry about that message.

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: Thank you. I'm going to support the motion. I think now so more than ever we need to remain competitive in the global market. I think companies like Global Fluency, even though we might not see the direct impact it's going to have but I think in the long run, long term it's going to provide us with good economic impact. I wanted to reiterate what the mayor was saying about Borgata recycling, that is in my council district. And because of a company like this, we're able to bring, you know, such a great company like that into a district like mine with that we're bringing a lot of employment opportunities, other types of services. And then I wanted to speak briefly on -- I went on a trip to Australia back in June. When I was there I got to meet with different officials from the Australian government. They knew about our Green Vision. Now, I asked them how did you know about it? They said they read it somewhere. But I know that we didn't write those articles from here, from City of San José, it must come from somewhere. And I haven't had a chance to speak to you all about it. But I think that this is a really good opportunity to get San José to remain on the global market, and we need companies like this to continue to provide the PR and the marketing services.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I don't disagree with anything anyone has said or what the mayor said. We are all in strong support of economic development and I commend Office of Economic Development with all the efforts it does with the lean staff. I think that in addition to OED, and we have Team San José, already, I think, we have a lot of people from a lot of different angles supporting economic development. I don't believe -- I don't -- maybe I'm more where the mayor was at first, in terms of what the best use of, frankly, a relatively small amount of money. I do think it's important to finally leverage it. I don't think shifting the focus of \$120,000 when other cities are spending millions is telling the world that we're not a player. I think that there are other ways that we can market ourselves. As far as messaging, I don't know what our message is. I saw an ad there from Austin it says welcome home. At least there's something there, being the 10th largest city is not a message. I do think we have compelling things about our city that our staff has a very good job of putting the information together and trying to get it out there. I don't feel that we have packaged ourselves or have something that can really deliver an overall sense and package of who we're and what we have to offer companies, what we have to offer families that want to come and move here. And that's something that I think this money can be used for to create that message. Again I think the media hits are fantastic. I think they're random. I don't -- some of the articles are not necessarily in relation to the other. I certainly think there's a benefit from it and there's a positive outcome from it we already know based on anecdotal evidence we're getting from companies that are moving here. I think especially the state of the economy, what it is now and given the fact we have a very limited amount of money to spend, I feel that that money may be better used and housed to create a more positive message, a more clear message to create a world class Website which I think also would be very effective in helping guide folks towards different departments, different programs we have, and targeting some of the trade shows, targeting some of the industries that we can still reach those same companies, but in a much more specific and much more strategic way. So I'm very much on the fence but I did sign on to Councilmember Chu's memo for a reason. Because I think, like I said, I'm probably close to where the mayor was a while ago, feeling that there might be a better way to market San José, and to track the benefit as far as economic development is concerned, especially given the limited resources we have. Thanks.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks, mayor. Paul, I had a couple of questions. One was, as we look at the memo on page 3, there is reference to partnership with CVB. Is CVB paying for any portion of this, this year?

>> Paul Krutko: No, this proposal we are bringing forward to you is solely with dollars we have in the Office of Economic Development budget. As we did, we started out in a partnership way, we were able to get some resources from the airport, airport's under financial pressure. We know that the Team San José is very mindful of their budget relative to T.O.T. As you can see from the memo, we have scaled the program back from what it was originally, it was \$200,000 in '06, in '07 we were at the \$150,000 level and now we're at the \$120,000 level. So we have asked our partners, that have worked in the past, and you know, they're not able to participate at this point in time. We are bringing it forwards because we think the continuity of the message is very, very, very important. So --

>> Councilmember Liccardo: I can certainly appreciate that. I would like to see the Convention and Visitors Bureau have a financial stake in this because they do have a financial stake in this.

>> Paul Krutko: The one thing I would like to say and the mayor alluded to it, we are in accord with the direction we received from the council in budget messages, working in a coordinated fashion. So one of the things that I can assure you is that what Team San José does do in terms of putting a message out is going to be in alignment. So the one thing we want to do is, we don't want to have one message from the City, one message from Team San José. In fact it was one of the things -- it's not in here, and I'll just allude to it. That's one of the things, when we work on with San Jose State, we're having an alignment with them, they have San José in their name as well. We are trying to get everybody who has limited dollars aligned in messaging. But you have to have is a core piece in crafting the architecture of what you're putting out.

>> Councilmember Liccardo: Thanks, Paul. I know there's also a reference at the end of the memo to the communications working group meeting on August 13th. That includes Convention and Visitors' Bureau, Downtown Association, a lot of different folks outside the city. I assume they've blessed this proposal at this point?

>> Paul Krutko: If Michelle wants to speak to that, she leads that effort.

>> Unfortunately, councilmembers, the communications working group meeting had to be postponed until this Friday, the 21st, due to some unforeseen circumstances. However, we will be meeting this Friday. This will be in line. But it has been posted, all of the members have reviewed the plan, and all of the members in the prior meetings we had in the formation of the communications working group, were very aware of the efforts to create metrics around the Global Fluency contract as a model that we were looking at, for their own organizations and their contracts. So they're familiar with the contract, and they have been partners, in previous meetings, in reviewing the messaging architecture and have all been very eager to work together.

>> Councilmember Liccardo: Thank you, Michelle. Paul, as you know Kim was also one of the early critics of it. I think the mayor and I voted against it in 2007. Over time I've also become familiar with what has happened as a result. I think the success has been considerable. We've got an enormous amount to offer in this city, starting with the most educated workforce in the country. That is a message we need to get out there that people simply aren't hearing enough. No effort on our part internally is going to change that. It takes people know how the New York Times and the Wall Street Journal and other folks work and can get important messages out to them. The last question I had was about that Guinness beer ad that came out in Dublin about a year and a half ago, somehow San José got in there. Did we have anything to do with that? Because that guy --

>> Paul Krutko: No, sir, we had nothing to do with that ad. Sincerely, we didn't have anything to do with that ad.

>> Councilmember Liccardo: Okay, that may have been our --

>> Paul Krutko: I don't even want to repeat it.

>> Councilmember Liccardo: It was a great ad, anyway. We have had a basic challenge in this city that we have an extraordinary amount to offer that people simply don't know about, all of us encounter other officials from across the country who ask us is San José ask near San Diego. Our most well-known song is "Do you know the way to San José?" I know Forrest Williams has suggested we come out with a new one, but until that happens, we continue to have this image problem that we need to overcome. Because we have so much to offer, and people just don't know.

>> Mayor Reed: Thank you. Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. First of all, Paul, for you and your team, for all the work you do in economic development I think is to be commended. I've had the opportunity to work with you on a local level, in increasing tax revenues in our districts. I say our districts, because you started with mine, but then we moved on to downtown, and we've been able to increase that and capture some of our tax base right here. There's no secret that I have not supported this in the past. And I will not be able to support this. And for me, at a time when we're discussing closing fire stations, reducing library hours, and many more things, we're now currently facing another, I guess, budget cut, what we have to think about what services or what priorities we will be cutting again, it's a very difficult time. And I have yet to see, and first of all I appreciate your presentation -- I have yet to see the impacts that have been able to bring San José at the forefront, when we talk about being seen on the national level. We've been contracting with them since 2006 and have put in over \$500,000. And as we continue to decrease that, at some point we're really only making a small impact. And I think we need to really focus our energy and our marketing tools and our public relations, on a more local, if not state, if not in the United States to get some of these companies. But I really appreciate the work that you've done. I will embrace the comments that my colleagues have made. But I really think that we need to think about how we're spending our limited taxpayer money wisely in this time, and until we are completely sure that we will not have to cut any more vital services to the residents of the San José, I cannot support this. But thank you.

>> Mayor Reed: Councilmember Chirco.

>> Councilmember Chirco: Thank you. Maybe you could help refresh my memory. I remember, it was in my first term. There was a whole series of council study sessions regarding San José and how do we begin to turn around? Because this budget deficit is not new. And I notice in 2006, we engaged the specialized media relations firm. And then in -- so that was 2006. So I was thinking it was maybe in 2005. And out of those meetings came, you know, San José's identity problem. What is San José's brand? How do we tell the story? We heard that from our driving industries, our support businesses and the grass roots community, the retail that served our community. And so I -- I just to be a little bit different than everybody else, I supported the original Global Fluency. Because out of that dialogue was, we needed to join with our partners, which we did, which was San Jose State, and the airport at the time, and the Convention and Visitors Bureau, to have a coordinated communications plan to tell San José's

story. And I know that there council has supported the policy of not just cutting our expenses, but also to grow our revenues, as a strategy to kinds of work our way out of this economic mess that we're in. So I really see this as part of the growing the revenues. And that being a council priority. So when I look at how this Global Fluency has returned, on the dollar, I think those are dollars well spent. Because I totally agree with Councilman Chu and Kalra, that we need to be mindful of our dollars, but if we don't bring the dollars in, we can't grow our economic base that will then not just then employ one person, but hopefully 10 people, 50 people and a 100 people. So I will be supporting this, this is an addition of 120,000, and out of that I frankly want ten-plus dollars for every one of those dollars. That's a lot of bang for the buck. So I will look forward to seeing the results of this, and the media that this generates, and I like hearing that people know where San José is, they know what San José's priorities are, and they're looking to us for guidance. So I will be supporting the motion. Thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I just wanted to take one last shot at people that are reluctant. And I'd like to refer, first of all, Sam, you've already complimented me, so I know you read it. I just put out a newsletter that talked about the first segment of the trip and it had to do with Helsinki. I wanted to talk, too, with Talen, Estonia. We've had business with them. In fact this summer, I discovered we got not only skype, they are on Hamilton avenue, entrenched, employ hundreds of people. But there is another company going here soon going to our marketing access center, they are so enthusiastic, it is absolutely contagious. You'll notice in my newsletter, that we have 20 companies from Finland. You know, I apologize, I haven't done a very good job of educating -- as chair of the economic development. And I will do a better job. But we are getting the companies here, we are getting the countries interested, and believe me, it is a global, global market. Let me give you a for instance, Russia is here, I think they came to San José today. But they are looking at law schools. In fact I believe they went to the Lincoln Law School. Because they don't have a solid middle class. They thought gee, if we can get more of Power our people to become lawyers, maybe this will give us a head start towards creating more of a middle class. They're out there, they're aggressive and making things happen. We all know that attorneys are fell think rich, right?

>> Mayor Reed: No.

>> Councilmember Pyle: (laughing) it is also helping our airport. The airport has been through such a horrendous struggle in the last two years. I think there are many ripple effects. The companies are not only here, but they are -- more are coming and we're happy about that. So thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thanks, mayor. Last comment. If we knew for certain that we're going to get ten to one return on investment, I'd certainly be supportive. It's not that. And the fact that we have Skype is because eBay bought them. There's a lot of reasons why companies are -- why they want to move places, why they want to come here. Obviously, it's a global market. There's a lot of great things our companies are doing, there's a lot of great things that our city is doing. I think we need the focus on our marketing, I also think that we need to focus a lot on our region. A lot of Bay Area cities that market a lot to the Bay Area. There is a great opportunity there when I go to a lot of these conferences and forums in San Jose or around the Bay Area, a lot of people, a lot of companies that are looking to grow don't know what San José has to offer. So there's a great opportunity there as well. I agrees 100% with everything that Councilmember Pyle said in terms of it being a global market mand we certainly need to continue to focus on that. I think helping the companies that we have here in San José better market to the rest of the globe as evidenced in eBay bringing skype along, more than \$120,000 contract with global fluency. There are more factors involved than getting in a few articles. I think that we should remember that the driving force really are these great companies that we have and they're the ones that are promoting San José more than we ever could and whatever we could do to benefit that will be beneficial to us.

>> Mayor Reed: I'll take testimony at this point. I have several people who want to speak. Please come down close to the microphone when it's your turn to speak. Yolanda Cruz (saying names).

>> Hello, my name is Yolanda Cruz, and I'm the president of AFSCME MEF, the largest bargaining group of city employees. I'm here today to urge you to support Councilmember Kalra's and Councilmember Chu's memos to deny the approval of additional funding for Global Fluency public relations services. As you know MEF ratified an agreement with the City a few months ago to forgo our raises and salary-step increases to save city services. In doing so, we demonstrated our commitment to the citizens of San José and our willingness to help the city balance the budget in its current fiscal crisis. After hearing some of the decisions at the last council meeting announcing this recommendation today it is extremely disconcerting

for me as a union leader to have to face my members when funding is being considered for things that do not meet the same criteria that you presented to us at the table. As employees of this great city, we stepped up and made the difficult sacrifice to take away from our families to help the city balance its budget and save valuable services. We did this in good faith with the understanding that the city would make sound and prudent decisions as we navigate our way through yet another difficult cycle. The city continues to state that our fiscal crisis is growing larger every day and the impacts of the state take aways have yet to be fully realized. To make decisions about increase funding for something that is not considered a core service is fiscally irresponsible. It is important to invest in San José but our efforts must be tangible and meaningful to promote growth now. Please confirm for my 2500 members that the sacrifices they made were not done to fund projects in noncore services. Do not destroy our trust in you and city management. It is the most critical attribute that we all need to have as we continue to grapple with the projected budget shortfalls for next year. Thank you.

>> Mayor Reed: Ed Rast, Kathy Brandhorst, Ross Signorino.

>> Ed Rast: Hi, Ed Rast. The last almost 25 years I've basically been a consultant and in executive search. And one of the areas I do a lot of work in is economic development. I'm basically hired by a company to help them find new location for their facilities. Whether it's a headquarters, call centers, distribution center, et cetera. What you do when you look at that process is you look at all the factors. Look at cost, look at how easy it is to deal with local government, what the training looks like, what the type of people available look like, so on, so forth. And when you type that analysis and do it against San José, we do not come out well. And while we talk about the idea that we should be doing all these wonderful ideas, what you have to take a look at is results. And in looking at results, our results are not good. It isn't so much, you know, what you'd like to have or what you think can happen or what may happen or hope to happen, it's what actually happens. We have 82 jobs for 100 employed people with the county average being 123. That means we're two-thirds of the jobs that other cities in this county have. There is a reason for that. Just like, why did Tesla go to other places or why do other companies go to other places? Well, one of the things is, we have the highest cost of doing business in this county. And now we're soon approaching the highest cost of Silicon Valley to potentially include San Francisco. So when companies look at not what the cost of coming here is but they look at the continuing cost, they don't want -- they don't come here a lot of times or if they do come here they don't stay or they expand somewhere else. It's great to market but if at the bottom line you're marketing and you get the person in the door and they go to the city next door or the city up 101 it doesn't do you any good. What you really want to take a look at is why, what's happening when we address situations with these companies and why we're not getting the results and the people coming to San José and do it in a very critical manner. We're in the eighth year of budget deficit. It's primarily because we don't have the income. We don't have the income because we don't have the jobs. We don't have the property tax or the sales tax. Thank you.

>> Mayor Reed: Sorry, your time is up. Ross Signorino.

>> Ross Signorino: Mr. Mayor, members of the council. This subject has been out so many times, been talked about so many times, you've been making so many efforts in this regard and I remember back in the old City Hall, councilwoman Cole, suggested when you go traveling, you councilmembers, you have key chains with San José, so you can pass them out on your trips. Don't put on there, "do you know the way to San José," just put on "San José here I come. And councilmember Pat Dando went to Washington, D.C, she was so surprised, they didn't know we were the 10th largest city in the United States. That's one thing. If you bring baseball here you should brag about the fact that this will give you a good deal of notoriety, without a doubt. Brag about the fact that it's not going to cost the taxpayers any money whatsoever. That's something that people will say, gee, San Jose is doing it right, look at San Jose. The same thing with the bad press that California is getting and it rubs off on everybody in San José, even on the Jim Lehrer report, they talk about that California cannot balance its budget. We have a problem, deficit and so on, and what do we do? We have to pass out I.O.U.s. And the country hears that, what's going on over there. All these things have a great influence on us and I agree with you. Don't ever try that business what you tried before, bringing the grand prix here and thinking that this was going to give you such notoriety and the money we spent on this. And then the 26 different countries this was supposed to be broadcast in and even the Falkland islands, I feel sorry for the Falkland islands, they don't even have the grand prix to talk about anywhere.

>> Mayor Reed: Thank you. Councilmember Oliverio.

>> Councilmember Oliverio: How I say this I like the fact there's concern about spending and that we need to be frugal or vigilant for finances. But that really has to happen with every line item on the council agenda. And I think, you know, this isn't a panacea. Someone made reference that we have a low amount of jobs in San José. That's because councils before us decided to build a ton of housing and didn't save enough land for jobs. That's a fact, so let's point at where the blame needs to go on your elected officials. I will ask Paul if you come up for a question here, I'll start to ask the question as you're walking, also the City Manager, when it comes to contracts we give to people, as their service to city, do we take advantage of the declining economy, do we say, I know you've signed up for this but can we do better? Do we do that proactively?

>> City Manager Figone: We do have some rules in place which might preclude reopening and renegotiating. So I would say that where we do have the opportunity in an extension, depending on the process that was used to put it in place, yes, we would. I can't tell you off the top of my head if -- which contracts we're doing that with but I know it has been referenced to council and to the degree we can before renewal, we will.

>> Councilmember Oliverio: Sure. And Paul to you on the same kind of question in relation to this do you feel it's the best price we can get during these times?

>> Paul Krutko: Councilmember, we have worked very aggressively with Global Fluency on working to try to get the very minimum of what we need. I should say to you, and I didn't say it in my presentation, that we know that they think this account's very important. And they have provided extensive work above their contract to support this effort. So we feel we're getting real value for the dollar because they're committed to it and they have gone and done extra work beyond what we actually contracted for.

>> Councilmember Oliverio: Thank you. And to the City Attorney, when it comes to -- and Paul I'm going to ask you one more question if you want to stay there. City Attorney, when it comes to contract negotiations, what are some of the limitations that's an example? When I have something that's up for renewal, I could certainly say, "no, I want to pay less." Correct me if I'm wrong, because my background coming from public institutions is different.

>> City Attorney Doyle: Is absolutely. If you want to get more bang for the buck or renegotiate some essential terms, that really a business decision. I think to the extent the staff is -- and I think out of the last budget discussion that was one of the charges, that they were instructed where contracts were open for renegotiation to try to get more bang for the buck.

>> Councilmember Oliverio: And then I'll say this, I was at the ribbon cutting for Ericsson, and one ever them said, you need to do more to let people know how great San José is. Coming from executive management, he said you got to market. He thought they could hire people to scour the globe and put on a cape for San José, but his heart was there he wanted us to do more because I think he sensed some good things in the way he was treated. That's my comments on this. Paul since you were here and it's the headline of the day and Tesla is in Palo Alto, the reason they're there, from what I understand, they had to use federal money to lease a brown field site meaning a facility that is vacant. Do we lack those sites in San José?

>> Paul Krutko: Councilmember and I can be corrected but we made an extensive effort with Tesla, with good offices of the mayor on several occasions, to take that stipulation away. It's our opinion, it's Patton Boggs' opinion, that that wasn't a limiting factor in their decision. However, what I think the limiting factor in their decision was that they wanted the decision to build new. And what's the challenge for us right now is, that's a 350,000 square foot available facility. We have facilities like that in San José but they have been carved up. That's how many of our owners responded. They couldn't -- they couldn't as an Agilent could, keep that size facility in that condition. So we showed them a number, I can't tell you how many buildings we showed them. But this one just seems to be the right one for their needs at this point in time.

>> Councilmember Oliverio: And Paul and then last, is it the factor of the where the CEO lives? It's a commute, they don't want to drive so far?

>> Paul Krutko: I think the founder is the critical factor. He lives down in the Long Beach area so yeah, that is a factor, not to take too much time, but the one time when we did pitch eBay, and we did win that competition, one of the slides we had that got a laugh from Meg Whitman at that time was the distance from her home to the facility. So that is something they think about.

>> Councilmember Oliverio: Thank you very much.

>> Mayor Reed: I have a motion on the floor to approve the staff recommendation. All in favor? Opposed, Kalra, Chu, Campos, so that passes on a 7 to 3 vote, with Councilmember Constant absent due to illness.

>>> We had a request to pull 2.6 by Kathy Branhorst, who is not here. All in favor, opposed, none opposed, that's approved. Also from Kathy branhorst, is 2.7, part of the main motion because we didn't pull it. 2.9, appointment of a representative to the mobile home advisory commission. I need to disclose in preparation of this meeting I did speak to Gus Colgan of CMRAA organization. And I do have cards from the public to speak on that. Councilmember Nguyen, you wanted to pull this.

>> Councilmember Nguyen: Yes, if I could hear the public testimony on this.

>> Mayor Reed: We'll take the public testimony, Gus Colgan. (saying names) please come on down so you're close to the microphone.

>> Good afternoon. Many of you know me, many of you don't. I'm Gus Colgin, president of Camra. Today we want to discuss the fact that Camra, a supportive member of this community, we are recognized nonprofit organization, state of California and federal government. Our opponent are the people who have been applying are a local homeowners association which has no official recognition. Recently, our member and the representative, Paula Merola had to withdraw her services because she was ill and she has since passed. Immediately upon being told of this withdrawal or resignation from the position on the MAC board, the organization called me and asked for a replacement of her. We scrambled and over a period of time of 24 hours or so we came up with the name of Stephen McHenry. He was aware of the local issues and statewide, facing the local residents. And I felt at that point that he would be a decent representative for all mobile home residents in San José. And that he would accept the support and input of camra on problems and issues that were going to arise. As you will -- most of you know right now there is a lot of problems with infrastructure. There's a lot of problems with gas and electricity and -- you have to be on stop of it.

>> Mayor Reed: I'm sorry, I got to stop you, your time is up.

>> I thought I was open mic.

>> Mayor Reed: Open mic is only two minutes.

>> We are asking that you re--

>> Mayor Reed: Okay. Gail Osmer and Ursula Helsing.

>> Good afternoon, Mayor Reed and rest of the council. Thank you for allowing me to speak. My name is Gail Osmer and I'm a resident of manor and this is where the appointee lives. If you appoint this person today you will be taking away all rights as a true representation of the mobile home community. Home, which put up this resident, represents only about 30 or 40 people in our park. They do not have open meetings. Their meetings are not -- they don't let anybody in our park know about them. They're not recognized in our part and they are not a viable organization. In the two and a half years that home has been at colonial mobile park, they have caused nothing but problems, and have taken away many of our residents' rights. This is a senior mobile home park. This appointee has no knowledge of the Mac community and has no knowledge of any political -- doesn't have any political knowledge. And we would hope that you would reconsider and appoint Steve who represents camra and thousands of mobile home community people. Thank you.

>> Mayor Reed: Ursula Helsing.

>> Yes, good afternoon, my name is Ursula Helsing and I am president of the homeowners association of the chateau La Salle mobile home park in district 7. We feel that it's very important that you take a second look at this issue, because any dealings that I personally and, as the president of the homeowners association, have had with home has not been good. It appears that we're not listened to that unless it is on their agenda and for the sake of the residents of all mobile home parks in San José, and in California, for that matter, you know, we do need good representation for them. Especially since, with the economy and so forth, you know, the people are having trouble just making ends meet in mobile home parks, and we certainly don't need to not have the representation they deserve. Thank you so much.

>> Mayor Reed: That concludes the public testimony. Councilmember Nguyen, do you wish to speak on this item?

>> Councilmember Nguyen: Thank you, we have 50 mobile home parse in the City of San José of which 17 are in my district. The mobile home association, is very active, we have representatives from the tenants as well as the parks. We have neutral who represent neither mobile home organizations or tenants. When I review applications of individuals who want to apply to serve on the mobile home advisory commission I take into consideration the affiliation with outside organization that actually

represents tenants' rights as well as issues that pertains to mobile homes in San José. I think Joann ingall is a wonderful woman. I thank her for applying but I take into consideration what was being said by some of the speakers and I want to make a motion to reject the appointment of Joann ingall to the mobile home advisory commission to go back and begin the recruitment process again.

>> Second.

>> Mayor Reed: Okay, we have a motion on the floor to ask staff to re-do the recruiting. Councilmember Chu.

>> Councilmember Chu: Thank you very much, mayor. You know, since I was appointed to be the liaison to the mobile home commission, we haven't been able to have one commissioner meeting due to the lack of quorums. We are having difficulty of filling this commission until the last month, we finally had our first commissioner meetings. I definitely, new to this new mobile home park, or I didn't know there was in-fighting between the homes and the camra's group and I just reviewed the qualification of the two applicants. I feel that they are both equally qualified, and I just chose Joann. And by verifying with the clerk that the home is a legitimate homeowners organization, so I think -- I don't have any strong reason to switch from Joann to Steven, except that I understand there seems to be some in-fighting between two mobile home groups.

I believe they both would serve the mobile home commission very well. I'm very happy to at least assemble a group of mobile home residents, mobile homeowners, to finally be able to convene commissioner meetings. I am hoping that the mobile home commissioner meeting will bring valuable input and recommendation to the city. My understanding, they haven't been able to convene for over a year now. So I definitely like to take the opportunity to thank everybody who is willing to serve on the mobile home commission and I will not be supporting the motion.

>> Mayor Reed: As the former, former liaison to the mobile home advisory commission, before, well, a few years ago, I'm very familiar with the work of camra and GSMOL, the two major organizations in the state with mobile home parks. I've never heard of home before. It is a new organization, I believe, and not widely distributed around the parks. And I think that it's important to have somebody who has a very broad reach in terms of an organization to represent the -- that group in the commission. So I'm going to support the motion, and we'll just have another look at the recruiting if the motion passes. Councilmember Herrera.

>> Councilmember Herrera: Yeah, first I want to thank Councilmember Chu for his work in trying to get this commission together. I'm sure there's a lot of divergent points of view that come together at the mobile home commission. I am familiar with camra. I've met them, I've been out in the community with them. So I'm just really concerned that these major organizations are having a problem with this and I don't see the other organization even here. So it's -- it's not usually something I'd want to get involved in, in terms of a commission appointment. But it is something we need to take a look at here so I will be supporting the motion.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks, mayor. I'm certain I don't have enough knowledge or information to know exactly what the right decision is. But I guess my question would be for the clerk. It sounds as if there's been a problem of getting a quorum so there's certainly more than one vacancy, is that fair to assume?

>> There has been a problem getting members on the mobile home commission which meets various criteria of membership over the last couple of years.

>> Councilmember Liccardo: And do you know how many -- how many vacancies there are? It's just one, we are only filling one today.

>> As I recall, we're only currently filling the one vacancy.

>> Councilmember Liccardo: Okay, thank you.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. I would defer to the liaison of the actual committee to be the expert in the area. I have to take heart to Councilmember Chu's comments. I'm not familiar with the situation, obviously I'm hearing the testimony today. I would ask the question, is this something that could be deferred for one week for some kind of conversation the council liaison could have and come back next week, I throw that out as an option. Is this time -- sensitive to the clerk, I guess?

>> No, it's not time-sensitive. There are four members of the committee, commission, so they could have a meeting.

>> Councilmember Oliverio: And then Councilmember Chu, would that be a preference or would you rather have it be voted up or down today?

>> Councilmember Chu: Thank you very much. I definitely would like to maybe talk to both of the applicants, you know, given the opportunity. So I would -- I would definitely consider that.

>> Councilmember Oliverio: With that said, speaking to the liaison to the council, I would like to offer a substitute motion to delay this for one week or whatever is the appropriate time for the Rules Committee.

>> Councilmember Liccardo: Second.

>> Mayor Reed: Okay, we have a substitute motion to defer for a week, it wasn't clear -- back to the council or is it Rules Committee?

>> Councilmember Oliverio: Oh, I'm sorry, I would put that -- make it one week and that would be my preference, unless Councilmember Chu feels two would be fine.

>> Councilmember Chu: Did the camera gripe went to the Rules Committee and talk to the members of the Rules Committee regarding this appointment?

>> Mayor Reed: There was testimony at the Rules Committee. We I think had one person from the public spoke at the Rules Committee.

>> Councilmember Chu: Okay, it was not a Rules Committee referral?

>> Mayor Reed: Rules Committee took your recommendation and forwarded it on to the City Council but there was testimony at the Rules Committee meeting.

>> Councilmember Chu: Does the attorney have something to add?

>> Mayor Reed: We have a motion to defer this for one week.

>> City Attorney Doyle: No, the Rules Committee took your recommendation and that's what's on the table. I was just going to repeat that.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: I'd like to speak against the substitution. I think that camera is one of the most widely recognized groups for mobile home communities. They have connections, not only here in the city, but across the city. Sacramento is an area where they're very, very well-known. They do have legal advice within their group. And I -- it sounds to me like a splinter group should not be the one to make the decision, but rather, the group that has had the staying power over the years to represent mobile homeowners. Thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. Which seat is this? Don't they have some reserved for owners and residents and owners and for tenants and owners?

>> Councilmember Kalra, the commission has one tenant represent, one resident represent representative, as I recall this is the resident representative.

>> Councilmember Kalra: Okay. And Councilmember Oliverio, as to your motion for deferral, what's the purpose you mentioned, so that Councilmember Chu could have an opportunity to do what, exactly?

>> Councilmember Oliverio: Sure, Councilmember Kalra. I believe each of us are liaisons to various committees and supposed to be the content experts of those particular areas. I just believe if the council liaison believes someone should be appointed, but there's a question of that from the public or my council colleagues, let's give it a week to hash it out and come back.

>> Councilmember Kalra: What would happen?

>> Councilmember Oliverio: I imagine Councilmember Chu would have a discussion with those groups in some capacity and come back to the council with a motion.

>> Councilmember Kalra: And Councilmember Chu, prior to the hearing today, this item pulled off the consent calendar, were you aware of any objection to the appointment that you had recommended to the rules committee?

>> Councilmember Chu: I do -- the camera just sent letters to object for appointment. After the appointment, right. And I also have a letter of recommendation for Joann from the different organizations.

>> Councilmember Kalra: But you received a written objection after you'd recommended an appointment before the Rules Committee meeting?

>> Councilmember Chu: Right, yes. Their objection is that home is not a legitimate organization that represent the homeowners. So we verified that with the clerk's office. And Dennis do you have something to add?

>> Thank you, councilmember. I just wanted to clarify for the council that the Municipal Code requires that one member shall be a person recommended by a an organization of residents of San José mobile home parks. And as we received the nominations, or the application from the two persons, we verified that they

were in fact recommended by each was recommended by an organization of mobile home park residents.

>> Councilmember Chu: That was their original complaint. So I went back to the clerk's office to verify that home is a legitimate organization that pull up the recommendation. But I didn't know that, you know, how strongly political influence that camra has, you know, until just now I didn't know that Councilmember Nguyen was going to pull this item, otherwise, would have given me an opportunity to discuss or to meet with both of the applicants.

>> Councilmember Kalra: Do you have -- so you hadn't met with either of the applicants?

>> Councilmember Chu: No.

>> Councilmember Kalra: It was done through the regular process, kinds of the regular going through the clerk's office et cetera and you made recommendation for appointment?

>> Councilmember Chu: Correct.

>> Councilmember Kalra: I guess what I want to know is, is one week going to do anything to change your minds? You did follow up, and you verified that it was a legitimate organization with the clerk's office. So what, if anything, would change your mind between now and next week?

>> Councilmember Chu: I'll definitely have vase-time for each applicant and I'll make my decision on the base of the applicant, not based on their affiliation with any group.

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: Thank you. I hopefully will put forth the substitute motion, and move on. I think seems like a couple of folks are blinds-sided by what's going on internally with the different organizations, let's give it a week and we'll come back and have the discussion next week, thank you.

>> Councilmember Chu: Mayor, if I may.

>> Mayor Reed: Yes.

>> Councilmember Chu: I would like to take a week to talk to both of the applicants. Not to the two groups. Because I'd like to make the decision based on who's the most qualified applicant, not an affiliation of their organization.

>> Mayor Reed: I have one question when this comes back. I would like to have the clerk verify how many mobile home parks camra has representatives in and how many home has representatives in. Make sure I have correct facts on that. We have a motion, substitute motion to defer this for one week. All in favor? Opposed? None opposed, that's approved. Okay, we'll take it up in a week. That concludes the consent calendar. Item 3.1, report of the City Manager.

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

>> Mayor Reed: 3.2 is report of Rules and Open Government Committee for July 29th, 2009. We have a motion to approve. Councilmember Pyle has the motion. All in favor [ayes]

>> Mayor Reed: Opposed, none opposed, that's approved. Item 3.4, Sunshine Reform Task Force phase II recommendations. We have a presentation from Sunshine Reform Task Force, Ed Rast is the chair of that and then we'll take up the council discussion. But I think we're starting with the staff presentation. I just want to disclose that in preparation of the presentation I or my staff talked to Bert Robinson of the Mercury News, and many, many other people but staff why don't you take it away.

>> Tom Manheim: Thank you, Mr. Mayor, members of council. I'm Tom Manheim. This indicate a significant milestone to the city's efforts to increase transparency in the City of San José. The items before you represent much of the second phase of the Sunshine Reform Task Force task force recommendations. As you'll recall the city council did approve the phase 1 recommendations in actually two different meetings, August of 2007, and June of 2008. The task force completed its work on phase 2 in August of 2008, and since then, the Rules and Open Government Committee has been reviewing those recommendations through a series of meetings over the past year. I do want to take a brief moment to recognize and commend the Sunshine Reform Task Force, including chairperson Ed Rast who is here in the audience, Judy Nadler who chaired the ethics and subconduct subcommittee, Dan Pulcrano chaired the technology subcommittee, Ken Podgorsek dhaird accountable subcommittee and Bert Robinson, and Bob Brownstein and Virginia Holtz, who were on the task force. understand what's going on in the San José city government and to participate and engage in those issues and that can only be a good thing. In addition to the proposals that we'll be discussing this afternoon, there are a few trailing phase 2 recommendations which the Rules and Open Government Committee are still considering. Those are not before you today but I'll just mention them. The police records and the police and fire statistical reports are still before the Rules Committee. In addition I do want to call to your attention a supplement memo we released on statistical reports on the requirements for the independent

police auditor. As you know since the task force made its recommendations there's been a change in leadership in the IPA's office. As we were meeting with the independent police auditor in preparation for this meeting, she did have some concern. She had not been directly engaged in the initial discussions and she asked for additional time simply to review and better understand those recommendations. So as part of our recommendation before you today we're recommending that you not act on the IPA strategic -- pardon me, statistical reporting but instead, we would be bringing that back to the Rules Committee for some additional discussion. The -- we will be discussing four different sections of the Sunshine Reform Task Force. The ethics and conduct, technology. The administration and accountability. And the public records sections. And we will take them in that order. I just want to ask your indulgence. There's been a lot of time and effort invested in this by the Sunshine Reform Task Force and the Rules and Open Government Committee. We will move through this as quickly as we can but it will be a presentation that you traditionally receive. Lisa Herrick will start with the ethics and conduct section, I'll move on to technology, administration and accountability and she'll finish up with public relations.

>> Lisa Herrick: Good afternoon. The ethics and conduct section was largely adopted, the recommendations from the Rules Committee is to forward all proposals except for a couple from the task force so this section will not take as long. But the ethics and conduct provisions really were intended to assist all of those people working in the city, with thity, volunteering with the city, to understand and adopt the reforms, and model the behavior of an ethical organization that comes right from the task force's intent statement. And so they made a number of recommendations that relate to disclosure, code of ethics and periodic review of the reforms that are proposed throughout the -- both phase I and phase II of the task force's work. There are two recommendations that are not being forwarded to the council, and both relate to lobbyists. One would mandate how often disclosures would be filed. An other for position of authority lobbying that councilmember. The rules committee determined that defining position of responsibility, that term required more analysis and recommended that both of those proposals go to the mayor's biennial ethics review which is meeting this year and in fact held its first meeting in June.

>> Tom Manheim: That ends the ethics and conduct. Technology will also be a fairly short section. The technology section was designed really to ensure that the City of San José uses technology to support, improve and further open government. To further open government, further transparency and access to public records, the task force did make a number of recommendations in the technology area. This is the one section that the task force suggested should only be recommendations, should not actually be included in an open government ordinance, and that was in recognition of the fact that technology does change quickly. So these, rather than being a part of any ordinance, would be sort of the guidance that we would strive towards, as we look at technology for the future. In most of the areas, Rules Committee agreed with the task force recommendations. While at the same time, recognizing that there are significant resource concerns facing the city right now, and the task force itself also recognized their resource concerns that will probably delay our ability to implement all of these immediately. There were to substantive areas that I would just note where there was some divergence between the task force recommendations and the recommendations from the Rules Committee. The first was with regard to e-mail retention. The task force recommendation would have all e-mails to councilmembers, to the mayor, to your staffs, all of those e-mails would be retained for ten years. All e-mails to and from all other Form 700 filers in the city would be retained for five years. And the Rules Committee did not forward this recommendation since best practices in records management would dictate that decisions on how long you retain records and which records you retain would be based not on whether it was in an electronic form or paper form but rather based on the content of those messages and the records retention schedules for those records. The other area of divergence was that the task force did want any changes to the records retention schedules to go to Rules for approval. And the Rules Committee accepted the administration's recommendation that this really is an administrative matter. But they did recommend that rather than bringing it to Rules that those be posted for 30 days before they become effective. And that is the -- all we have on technology. Administration and accountability was a section or is a section that's really designed to encourage -- and the task force is very specific on this -- voluntary compliance with open government ordinance, with Brown Act, with the California public records act and with the political reform act. The process that the task force established for that was to create an open government officer position. That position would be an attorney, but that attorney would be in the City Manager's office, reporting to the City Manager, and that attorney's role would be to review many of the decisions that are made by the City Attorney, in terms of public records decisions, Brown Act decisions. They also recommended the creation of an open government commission, stobledz a number of processes for

filing complaints, filing appeals, appealing decisions and also established deadlines for responses to all of those. The overriding intent of the task force recommendation really was to create a review process when somebody wanted to appeal either a decision that would hold records or wanted to file a complaint over a Brown Act violation, to establish a review process that was independent of the city council and the city attorney's office. The recommendations did raise a couple of policy and resource concerns for the city. It would establish essentially a new operation within the City Manager's office. We projected a budget for that, and for the new -- the new attorney position, that would be in the manager's office as well as the commission. And it was over \$600,000 annually and you have that in the staff report that we provided you. There was also a question about whether there would really be enough work for the commission and the open government officer. There are relatively few public records act requests that are denied in the city. There are even fewer allegations of Brown Act violations. There was a third area that the open government officer would have responsibility for, which is sitting in on closed sessions to make sure your discussions are appropriate, or listening to tapes of those discussions. As you know, in a previous decision, you have committed to recording Real Estate, discussions of Real Estate transactions. But that's a fairly limited number of meetings. So when we looked at that time the workload before -- would be before the open government officer and the commission as well as the cost, the recommendation was that there might be a more cost effective way to achieve the task goals. And that is, the recommendation that's before you. The rules committee recommendation builds on the current appeal process, which involves the public records manager, anybody can appeal to the public records manager. Anybody can take an appeal or a complaint to the Rules and Open Government Committee. So it builds on that process but adds an independent review, using existing resources. And I mentioned, a complaint or appeal can be initially filed with the public records manager or Rules and Open Government committee. If somebody wanted to appeal their decision it could go directly to the elections commission or to the city council. And the elections commission, the inclusion of the elections commission as part of the appeal process was really designed to meet the intent of the task force which was to have some independent review. The elections commission already has that responsibility in the area of election complaints. They have their own investigatory complaints management. So by providing the elections commission as an additional path of appeal, we really can meet the task force's goal but not in a way that's so costly to the city. With that I'll turn it back over to Lisa for the discussion of public records.

>> Lisa Herrick: So I do apologize for starting with a brief overview of the public records act generally. I think it's useful to see how the proposals are framed, how they fit into the context. The blanks test is one of the significant issues here today. The intent of the public records acts of course is to grant the public accessing to public records, that's simple. Generally any writing, defined broadly related to the public's business and is reported used owned or retained by the city. There are only two instances in which the public records act permits a local agency to withhold records. And those are, if there is -- if there is a specific exemption that exists in the public records act, like one for drafts or personnel files or specific statutory provisions like the blanks test or exemption in a minute but first of all I wanted to talk about some of the proposals that the task force made, aside from the balancing test. The task force did propose presenting more evidence to the categories broad categories, although different specific proposals, of them, litigation, contracts, codes enforcement, and budgets. There is one exception, arounds the recommendation that relates to budget. The task force recommended that the line items budget be posted online, staff determined that because the detailed budget information is essentially kept in a format that is not easily extractible, posting it online wasn't a very -- was not a good -- was not a possibility, not an easy possibility. And so the Rules Committee recommended not posting the detailed financial information online. We are going to talk about detailed financial information in a moment when we talk about the balancing test. But that's -- I'll place-hold that in a while. So let me just tell you generally about the balancing test. This is really a general exemption in the public records act. And records may only be withheld when the public interest served by nondisclosure, clearly outweighs, the public's interest in disclosing the record, because this involves a blanks this is referred to as a balancing test, and the burden is always outweighs disclosure. The city, typically uses the blanks test to protect private information, negotiations and deliberative process. Those are the three loose categories. Because the task force's recommendations or one of the proposals would have covered much of the private information, that's really not one of staff -- that's not a big concern to staff. The two other categories raised more concern. To the extent that the cities use a balancing test to protect strategy on economic development negotiations or labor negotiations? There is concern that the city be able to continue to use the balancing test to protect those discussions. In the case of economic development negotiations very

often timing is everything so what may be sensitive at one point ultimately may lose that sense tifted and very often will end up releasing documents that, were no longer need to be withheld . Deliberative process is more complicated. While not explicit in the language of the public records act, the courts have established the deliberative process privilege in judicial decisions, judicial decisions interpreting the balancing test. permitting decision makers to receive can protect the facts themselves but the process by which decisions are made. The courts have also identified three policy purposes behind the deliberative process privilege. They're listed here. First to encourage open and frank discussions with superiors and subordinates, second, to protect against premature disclosure of proposed policies before they're finally adopted, and third to protect against public confusion that might result from the result of reasons and rationales that are not the reasons for the public agency's withholding or action . Often drafts which is why the drafts exemption and the balancing test really get wrapped up together in the discussion. The task force recommended eliminating the balancing test, except for four specific categories of information. And one is, personal information, which I mentioned earlier, private information that third parties might give to the city, with a reasonable expectation that that information be kept private. Identifying information about a city employee to the extent the city employee is participating in an investigation. Information about actual or potential threats to security of city facilities or public facilities. And then records prepared or used in connection with closed session. For all the reasons that I described before, though, staff encouraged the Rules Committee to retain the balancing test. But the Rules Committee considered the balancing test over several meetings and several months. I think it was four, could have been three but I think it was three. And Rules ultimately directed staff to do a couple of things. One was review the attorney general's materials on the California public records act and draft language that narrowly construes the balancing test and secondly to consider whether or not some lists could be prepared to which the balancing test would never be applied. In other words, we would always disclose these records, we would never assert the balancing test. The recommendations from Rules incorporates that direction to staff and does the following, in a few different sections in language before the council today. It's a narrow construction of the balancing test and makes clear that the City's interest in nondisclosure is not important. The balance really is the public's interest and not the City's interest that's weighed and we -- there's also a description of the deliberative process privilege which is also extrapolated from the attorney general's materials. It does include a list of records that would always be disclosed, those are the 18 categories of records that would never be withheld. As well as a list of records, there are eight categories, that would only be withheld under the balancing test if the Rules Committee specifically approved, approved staff's recommendation.

>> Tom Manheim: If I could just interject here, I do want to just as we look at this slide comment. The task force, I think, in its -- really did in a very sincere and thorough way try identify the kinds of exceptions that would be important to the city. Because in the discussions they did recognize that in taking the balancing test away, it was taking away something where there are legitimate reasons to withhold information. The -- I would say the overriding concern that the staff, the administration has raised is that we can't possibly identify every exception that might occur in the future. It would never occur to us that we would need to invoke the balancing test but it was important -- it was the only way we could withhold information that really the public's interest in disclosure was clearly outweighed in information keeping that information private .

>> Lisa Herrick: One last information about the 18 categories of records withheld. The last meeting that the Rules Committee considered the balancing test a question came up about whether detailed budget consideration could be considered in that list of records that would never be withheld on the base of the balancing test . We've looked into that and think that those records certainly could be included in that section. Finally, the task force made a number of recommendations which the Rules Committee has forwarded on to council, the process of public records act requests, in other words, make it quicker and less costly. Because the Rules Committee did adopt those with just minimal, minor modifications, that's just forwarded to you for consideration.

>> Tom Manheim: With that, we are done with our presentation. We are certainly here to take questions. In discussions with the mayor's office, my understanding is there would be ten minutes allotted to the task force members. And I understand that Mr. Robinson was going to go first followed by Mr. Brownstein and then chairman Rast would play clean-up.

>> Mayor Reed: Okay, why don't we let the task force do that, before we get into questions. Because we may have questions for them as well as for the staff and that way council can address it to whomever. Ed

Rast is the chair. Chair, did Tom Manheim get it right in terms of your sequence? All right. Come on down and.

>> Ed Rast: Mr. Mayor, Bert Robinson will start and followed by Bob Brownstein and then I'll clean up with general comments.

>> Mayor Reed: All right, take it away. First of all, thank you for serving. including the 35 or 36 times Rules Committee heard this.

>> Bert Robinson: It will be exciting for the Rules Committee to hear me again. Endorsed the overwhelming majority of the task force's recommendations. what it doesn't say is the Rules Committee rejected them primarily those that would significantly change the status quo. In those instances, the recommended. In my brief time, I can't describe all of those, and some of those are not yet before -- some of those issues are not yet before you. So let me focus on two proposals. First, several sunshine laws, including San Francisco's and Milpitas's contain within them a pledge not to use the so-called deliberative process privilege to withhold records. This judicially created exemption which is not part of the state law itself used to shield documents on what might shed light on how a policy proposal came to be. rather than disavow this tactic, the Rules Committee is first city to enshrine the deliberative process in law with the avowed aim of, quote, protecting the process by which policy decisions are made. This sort of language a pledge not to give information to the City's residents, has no place in the sunshine law. It will make San José's law a laughingstock. If you do nothing else, please remove it. Secondly, some other sunshine laws also pledge not to withhold records using the balancing test. San Francisco and Milpitas again. The Rules Committee's alternative approach on the balancing test to offer a relatively short list of records for which the test will not be invoked is flawed. The list of records itself emerged rather late in the process and was drawn up through a mechanism that was significantly less inclusive than it should have been. I would be delighted to describe better approaches to narrowing the balancing test than the once the Rules Committee took. If the council is inclined to follow this one, I would say you send a list of rules back to committee and instruct the staff to work and prepare a list in a collaborative fashion. As well intentioned as the mayor's memo released at 6:30 yesterday evening was, this sort of piecemeal records on the list really underscores the problem with the way we proceeded here. There's a better more deliberative way to do that. The unfortunate result of the committee process is that we've ended up with a set of recommendations that many members of the task force oppose. I don't think that speaks well for San José or for the process and I don't think it's necessary. We can do better.

>> Bob Brownstein: Mayor Reed, and members of the council. Back Sunshine Reform Task Force was established, one was that the people should have a meaningful opportunity to participate in government decision make. And the second one was that sunshine reforms should be enforceable. Now, as regards the opportunity for meaningful participation, that's difficult to achieve without excellent access to information. Particularly when we're talking about the city budget which is detailed and complex. Mayor Reed, I appreciate your willingness to put in your memo the item of making the foundation documents available without using the balancing test. But I would also suggest that the public needs access to departmental proposals that are made to the City Manager, even the proposals that were rejected. And the reason this is important is because the most difficult thing for the public to do, anybody in any community group to do, is to figure out alternatives to the proposed budget. It's relatively easy for people to say, "we don't like what's in it." But to find something credible and feasible that's an alternative really takes experience and expertise that the average community group lacks. They need to know what the people with experience and expertise, the department heads, have put on paper and suggested to the City Manager. And I understand that's part of the deliberative process, but it is the very ends of the deliberative process. I give the department heads credit that by the time they're putting something on paper and giving it to the City Manager, it is not a half-baked idea. It is something that has been carefully vetted within the department. The deliberative process is really at its end and the public should be able to have access to that information. As regards enforcement, unfortunately we have recently seen some actions that are contrary to the spirit and the letter of the sunshine policies, and they suggest that the direction of the task force regarding enforcement was a sound one. We've seen the City Clerk's office willing to accept memos that did not meet sunshine deadlines. We've seen a case in which citizens attempting to speak before the city council were denied the right to do so when a measure was being debated. That's a three-fer. That violates the sunshine policy, it violates the city council rules and it violates the Brown Act. Now, when I say that these things occur I do not suggest that the leaders of the city don't care about open government principles. I think they do. The problem is, all of us, who are involved in politics and government, not only care about open government principles, we care about a

number of other things as well. We care about policy goals. Some people care about careers. Some people care about political allies, some people care about deep philosophical values. And the power of those other motivations is what induces us to make open government principles come in second in many cases. And the way to constrain that temptation to which we are all subject is to have an enforcement mechanism that is independence and that has capacity to make sure that the rules are enforced. It really does not make a lot of sense to keep piling on new rules after new rules, if the existing set doesn't have a decent enforcement mechanism. The sunshine task force suggested an open government commission and an open government officer, those -- that would be a costly strategy. The budget is tight. But if that's not an adequate solution, let's try and find one that makes more sense in a tight budget climate. If we're going to use the elections commission let's make sure that we specify that it has jurisdiction over the entire set of sunshine policies, that its members are fully knowledgeable in terms of the sunshine ordinance, that they've had adequate training, that we have time lines in terms of how they respond to complaints and that they have some understanding about what a suitable set of remedies would be. I think the community would be interested in trying to work with the open government committee, to develop an enforcement mechanism that is one with capacity, that is independent, and does make sense in a tight budget context. And I would suggest the council refer back to open government that task. Thank you .

>> Ed Rast: Mayor Reed, mebts ever council the people have the right of access to information regarding the conduct of the public's businesses. Therefore, shall be open to public scrutiny . It further states that the statute or rule or other authority should be broadly construed if it furthers the people's right to access and narrowly construed if it limits the right of access. The constitution also accommodation back and says it does not repeal or nullify any constitutional or statutory exceptions, the public records act, or to weaken the confidentiality of public records. We looked at that. We also looked at the audit of the city's current eight years of deficits. We tried take those into consideration . We got a lot of recommendations from the public. There's still more need to get done. The Mayor in his moax basically said we cover the balancing test the public records request, the budget and other financial information and also, the new technologies issues that recently came up. I think the the mayor's memo helps a lot to baffles define some of the major ears. I want to thank him for it. I also want to thank the City Manager's office, the attorney's office, redevelopment agency for their hard work on this and I think it contributed to the conversation. During the phase 1 recommendations most of which were approved we definitely significantly improved the access to public meetings and the records that go along with it. And we got a lot of help and some of the recommendations from the staff went a long way to further that. When we got into phase 2, though, as I said in the initial letter, draft letter that came over on August 13th, many of the staff comments regarding the phase 2 call for maintenance of the status quo. Which I don't believe the community or the task force intended inconsistent with the charge we received from the council as well as the community apples clearly expressed expectations for change. When you -- we continue to trust the council answer review will be undertaken with a viewpoint that open government reforms are meaningful public participation. We face a tremendous number of challenges in this city, both revenue, budget, spending, trying to get our budget deficit and general plan and other things into place. And to be able to do those you have to have the confidence of the public, taxpayers and a lot of progress toward it. We still have additional work to do in the areas and I think we need to go back and look at some of these things and then look forward to finishing this up hopefully in the next three or four months. Thank you very much.

>> Mayor Reed: Okay, I think that's the official Sunshine Reform Task Force presentation. But we do have two more cards, along with those. I think I'll take them now, Dan Pulcrano, another member of the task force and then Terry frank. Why don't you come on down before we get into council discussion.

>> Dan Pulcrano: Thank you, mayor read, members of the city council. I'm Dan Pulcrano, vice chair of the Sunshine Reform Task Force, speaking as an individuals. I'd like to add my concern regarding this balancing test. This reminds me of the kinds of, you know, saying that something is in the public interest reminds me of the type of thing that used to go on in the Nixon administration when president Nixon would say, this is national security, when it was really to protect his political interests. Now, I'm not saying that anyone here would suggest that, you know, hey, we wouldn't undertake that type of behavior, but future councils might. We don't know who is going to get elected. But why not have a good council in place, something to allow for things to be decided by objective criteria as opposed to subjective material. This might confuse the public. I think this should go back to the task force for reconsideration so we can come to some consensus, rather than go forward with a divided proposal. Secondly, I just wanted

to speak to the technology portion that you're considering today. I'm pleased that a majority of the recommendations were accepted. I think we can do more work to implement a technology plan for sunshine that will take Silicon Valley to the next level. In particular, I think the city should begin publishing a document index by department so that the public knows what documents are available. Without that document index they don't know what to ask for. This is a very standard, simple thing. It's not hard to do. I'm surprised it was taken out of the recommendations and I think that that should go forward, only on a trial basis or that should go back to the commission.

>> Mayor Reed: Terry Frank and then Ross Signorino.

>> Mr. Mayor, honorable members, my name is Terry Frank. I'm the co-counsel for Californians aware, supporting open government and freedom of expression. As it happens, I was involved as a draftsman of the original San Francisco sunshine ordinance in the early 1990s and I've been keeping tabs on if not involved in most of the sunshine ordinances developed since then. I'd like to congratulate everyone involved in developing the proposals that are before you today. But with a real sense of disappointment and frustration, at a central flaw that marks them. And that is, the treatment of the so-called deliberative process privilege, and the balancing test. The deliberative process privilege was invented by the California Supreme Court in 1991. Before that, no one seemed to miss it. No one seemed to know they needed it. But like many new inventions, now that it's here, you don't see how you ever got by without it. And the difficulty I'm pointing to is an analytical one. If you look at 6.1.2.070 towards the ends of the July 30th memorandum, there's an attempt to paraphrase or establish the standard by which the deliberative process would be balanced against something else, and it reads, "The balancing test is determined in each instance to determine whether the public interest outweighs the public interest of disclosure of information." You take that out on the street and you may find one person in a million who understands what that means or its significance. I suggest a real-world, real-language translation as follows, because this is what we're talking about. The question is, whether the public interest in knowing what was said by whom to influence a particular decision outweighs the public interest in not knowing what was said by whom to influence that decision.

>> Mayor Reed: I'm sorry, your time is up. Thank you.

>> Thank you.

>> Mayor Reed: One more speaker, Ross Signorino.

>> Ross Signorino: Thank you, Mr. Mayor, members of the council. Mr. Mayor, in keeping with your campaign promise, when you were first running for mayor, which I thought was very good, I'm sure the people thought so, too, with the sunshine rule and know exactly what's going on and some of this closed door legislation, we try to do away with that. It's good that you even talk about the budget the way you do, trying to bring out things out in the open, and that's a very complex situation. But then, too, at the same time, another thing that keeps coming up in the newspaper, you read quite a bit about the police department not willing to release their 911 records in certain cases, and revealing other information, I really think that the sunshine rule should be balanced along this area where, in the case of releasing police records, where you have 911 recordings and all this stuff, and things that are critical to the case, where you might even jeopardy witnesses or jeopardy a case, in a court of law, and at the -- and at the same time, why, there's an investigation ongoing, I think there they should be preserved and possibly a way to preserve, I don't know whether you have this process going that maybe a certain A you or some citizens or citizens' group who would weigh this and see if it was legitimate, if there's enough reason to withhold this information from the public, I think that would be a good way to go about it. But just to say blanket everything out in the open, I don't think you can do that. In certain cases, I'm not talking about the budgets, I'm talking about something that comes under the legal system that we have to protect very much. Thank you.

>> Mayor Reed: Thank you, that concludes the public testimony on this matter and the presentations been the staff and the task force. I had a couple of things to add. The reason that councilmembers may be getting a sense of déjà vu, with the approval of these items today we will have over 100 specific items that have come before the council, including the Reed reforms, phase 1 of the Sunshine Reform Task Force, plus these. Close to 120 items of specific things that we have debated and discussed, at quite -- at some length at council and Rules and Open Government Committee. The committee has met 35 or 36 times to discuss the separate recommendations, including study session hours, the task force members to engage with the committee on that. So we spent a lot of time trying to figure out what the best answers were to some of the recommendations. I'd like to point out that that one of the significant and sometimes dramatic changes that we've had as a result of what the work we've already done is we have very much

changed the way that we do business. That we have eliminated the practice of policy by surprise. We have a ten-day rule, a 14-day rule, 28-day rule. We have got rules for committees, we have rules for the council and our subcommittees. So the public has a much better opportunity to get engaged in the process before we make decisions. The other thing we've done is, we've made it a lot easier for the public to get access to information. Anonymous, most of I in the room, maybe Rules Committee members accepted, don't know who Tom Norris is. Tom, would you wave? Up there. Over the past years, at the Rules and Open Government Committee, I think we've heard four disputes over public records act requests. And that's because the Tom and the manager handle them. People come in, they ask for information. Our goal is to get them the information, the Clerk's office, the meshing's office, the city attorney's office, all work to get people information to get it quickly, efficiently. If there are problems then Tom Norris gets involved and makes sure we're doing it right and doing it quickly. Tom has an idea of how much, by and large, I don't know if we're in the anyth percentile or 98th percentile we really changed the process. And made it easy for people. Rules and Open Government Committee is pretty simple. We meet every week. It's the only committee in the city that does. There rnts any boards and commissions that meet that quickly. If there are any problems, we can meet that week, no lawyers required, no boards required, just a simple request and we'll have the decision for them. The other part about that decision-making is that it's done in public. If we're going to apply the balancing test, or whatever the test pay be, it's done in a public hearing and decisions made by elected officials. And there's nobody in this city that's more accountability than the elected officials. And I think that is the place for these decisions to be made. Because we have to stand up to the media, we have to stand up to our constituents. We have to stand up to the special interest groups and justify the decisions that we make. Nobody else has to do that like we do and that's why I think having these decisions made in a public hearing by elected officials is the best way to ensure that we're all paying attention to the rules and people get access to the information that they're entitled to. There is also another route of appeal that staff has explained. So far, nobody has chose than route, and ultimately they can go to superior court, and we have not taken that away as well. I do make reference to the memo earlier, I do think there are things to take up than have been discussed by the task force and the staff aped just want to go through each of those seven recommendations. The first one has to do with the balancing test, deliberative process privilege and the things that have been topic of much of the discussion here today. My recollection is when we first started talking about the blanks test, we had a series of bad examples of how they were used to deny the public access to information. Overbroadly interpreted, and quite clearly, was being used to avoid giving up information. So the committee decided, well, we ought to eliminate that. Narrowly interpret that, narrowly construe that so it's used as intended and that's what we've tried do. We did have some discussion about completely eliminating those tests but almost everybody has at least one example of why you need to have it. Staff mentioned some. In fact, the Sunshine Reform Task Force had four exceptions to it. Let me give you mine, the one that I use. We recently had a discussion about 911 tapes, and whether or not a specific tape should be released. There was another one that has been the subject of some public controversy and whether or not it should be released. As a general rule, I think it's probably okay to release 911 tapes. But a general rule won't work with 911 tapes. And if we have an instance where we've had a serious, like, murder suicide and children are involved, there are a lot of things on the tape that could be harmful to the kids. Before I released those tapes I'd have to think about it, the public's interest in protecting the children against the public's interest in releasing the tapes. If you do a search on youtube, which we recently did, there are a couple of thousand 911 tapes on youtube. If it were my family, I certainly wouldn't want them on youtube and a lot offer other people wouldn't want them released. That's why we need to have the balancing test in place, I think its needs to be narrowly construed and that is the recommendation that has come from the Rules and Open Government Committee. The second thing that I'm asking the council to endorse, approve, is the practice of how we go about considering the release of 911 tapes, case-by-case basis, make the decision, and I'm asking the council to direct the manager to have a policy in the police department where the department does that balancing as well, rather than just having a blanket rule. That's a change from our past practice but I think it's the best way to go. Secondly, I recommend the council approve the process that we do for Rules Committee, dealing with public records acts disputes, very simple, not the only way but there's an effective way for people to get what they need. Also recommendation that we do, we're not going to withhold detailed budget information based on the balancing test. The language that Bob Brownstein recommended I think is appropriate, in terms of the aggregate data that goes into making the budget proposals. If people see a \$16 million figure in the budget and they want to know what's in that \$16 million figure, I think we should give it to them if we can

and hopefully we can if it's in the budget. And the money we spent last year ought to be available to the public. It's a fact, it's not a proposal, it's an actual fact and that shouldn't be withheld on the base of the balancing test. There might be other issues, like how much it will cost to compile it but those are different issues. What we spend and how we intended to spend our money. there is interest in having more program level information in the budget and I'm recommending that we continue to on the line that we've already started with trying to get more of that information to the council and we begin to include that in the 2010-2011 budget and we can follow the manager's work see what it looks like in that budget and tweak it as we see fit. The other recommendation, which is new, because when the Sunshine Reform Task Force got started, some of this stuff hadn't been invented. No one heard of Twitter and text messages were still an arcane, obscure form of communication. And I think that the Rules and Open Government Committee is the appropriate place to deal with how we ought to make those communications available to the public as public records. Personal e-mail, text messages, cell phones, public information Websites you name it, there are lots of technical issues, lots of logistical issues. Finally another thing that has come out, we do require councilmembers to disclose their communications with lobbyists. We should amend those slightly, if those communications occurred during the council meeting, the same as before the council meeting . Those are thing additions that I would add, when these came out of the Rules and Open Government Committee. With that, I'll let the councilmembers ask questions of staff or Sunshine Reform Task Force members as maybe necessary to move this ahead. Or is there a motion? Councilmember Pyle. Okay. Councilmember Pyle, has a motion to approve. Councilmember Pyle, does that motion contemplate the recommendations in my memo as well? Yes, it is included. Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. First I want to commend you. The way the business is done has changed and that has a lot to do with the evident you put into it and I also want to thank the staff and thank the task force as well as the councilmembers that over the years have spent time deliberating and discussing the issues before the Rules Committee. especially with newer technologies and ongoing issues, of disclosure, and the public record, it's not a discussion that's going to end today. I do have concerns based on some of the comments made by four different task force members on some of the suggestions, and staff recommendations. And I don't know, based upon some of the comments made by the task force members, if the staff recommendations do go too far. I do have concerns, however, that are similar to theirs in terms of the alternatives to the balancing test, and having this revised list that comes out that hasn't necessarily been vetted by the task force, after all the time that they've put in to -- into the work of making these phase II recommendations. Of course, the recommendation to not have a balancing test, I certainly understand the concern of the staff as well as the Rules Committee, of why a balancing test would be necessary, as well as with those types of exceptions. I also am concerned or at least understand some of the concern regarding the terminology of the deliberative process because it can be construed relatively broadly in terms of what that means and what that privilege means. Also mayor I think you do put forward some good recommendations, although clearly there hasn't been an opportunity for the task force to vet any of those individually but I do think there's some value in some of the details that you've outlined in the recommendations you released yesterday from your office. I will not support the motion because I do agree with the task force members that some of the details of the recommendations as well as the maimings that have gone through the Rules Committee and some of the supplemental recommendations that you have made, mayor, that I think there would be value to have that go back before the task force in order to allow this task force has done a tremendous amount of work to vet some of those recommendations and to offer their suggestions and changes or at least, so that we can hear in greater detail what some of their specific concerns are to some of the recommendations. Thank you.

>> Mayor Reed: Councilmember Nguyen.

>> Councilmember Nguyen: Thank you. I'm going to support the motion and I want to thank Mayor Reed for his recommendations. I think his memo outlines a very general public. I think that these seven recommendations laid out clearly indicated that he has into serious considerations of the Sunshine Reform Task Force members representations. Of course throrr few hot button issues that have not reached consensus among the task force members and staff one being the balancing test. But I have to agree with Mayor Reed, I support the balancing test I thought Mayor Reed gave a really good example of how we should main the confidentiality of releasing these 911 tapes when there's the issue of children that clearly indicated that we should not release these tapes because we don't know the effect that it's going to have on these kids, you know, after the incident and when they're growing up, these kind of drama will stay with them for the rest of their lives. And for that particular reason I don't think I will feel

comfortable carrying that kinds of weight or burden on my shoulder for the rest of my life, either. So I'm very appreciative of what Mayor Reed has laid out here and in regard to the disclosure of text messages and e-mails that the councilmembers receive during the meet, I'm in complete support of that. Anything in the City's business should be disclosed to the public and I don't have any issue on that. Obviously that's not on the agenda first to discuss but I look forward to hearing that discussion at the Rules Committee, thank you.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. I'm going to support this, I'm new to the council and new to this issue. But going back to 2007 how far we've come in terminates sunshine reform and public disclosures. Many of Mayor Reed's reforms have been adopted, many of the phase I and phase II recommendations of the Sunshine Reform Task Force have been adopted. That is something we should be proud of and I commend the mayor on his leadership on this. I look at this as an iterative process and we're going to continue to improve in and I don't think there's -- ace said it continues to be improved and I hope that as we go forwards, that we will continue to find ways to make information available in the most cost effective manner so that that isn't an inhibitor. And I also support in terms of number 6 on the mayor's memo, I think that if we are receiving communication on an issue with city business on a personal e-mail, or on a cell phone, that should be -- we should reveal that, that should be part of this. So I will be supporting this.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, Mayor Reed. I wanted to thank the Rules Committee. That was going to be one of my questions, how many times did this come before the Rules Committee, you mentioned in the mid thrice. San José has not done this in prior administrations, we are moving forward and making a lot of progress in that regard. I agree with Councilmember Herrera, this is an iter raiser process. You might have to take a time out, and implement what you've already passed. We keep burdening the City Clerk's office to the point of through the budget cuts they've suffered, if we want more openness and all that they need more resources to do it. At the same time, if I'm looking at putting more burdens on the police department, I am going to need a way for them to deliver. I can pass an ordinance but if there's no way to deliver it then what's the point. So I would say, we've made great strides, let's actually implement some of these things, decide where they go and we can decide at what level we go at that point. I would say technology is a big thing here and again it's going to be the stretch on how we actually pay for all these great systems that exist and I think that's one of the things that the city's going to have to grapple with. And I said this before, our technology, as much as a sewer or a street, we're going have to figure out how that's going to be funded. Whether that is through an innovative way of going to the voters or cut something else, in that regard I would say just in the pure way of navigating the Website, our I.T. department implemented a search tool, I won't mention the brands name, but that search tool and when it comes to public records requests we can use new technology that allows us to instantaneously find things that people request from the PRAs and I think that's important. At this point in time, we have zero access to this data that the city runs on. I think we should consider that as a risk management tool as well. I have a concern with item number 7. Item number 7 fears me is limiting it to a text 42 lobbyist. But in the well highlighted Mercury News article, that came from not a lobbyist. Because we have certain organizations that are not political but they don't have to register as lobbyists. So I'm curious if we can change lobbyists to just anyone that's sending a message on that particular agendas item. I think that would be more fair because that is more conclusive. Otherwise we're carving out a big loophole for organizations that fall through and don't have to register as lobbyists, even though they are very political. I'm wondering if, Councilmember Pyle, will you allow for that? So go to item 7 on Mayor Reed's memo and instead of it sayings lobbyist disclosure, it should just be anyone that sends you a message in regards to that agenda item.

>> Councilmember Pyle: This would be for Rick. Is that a requirement of disclosure? I don't recall any of us saying, well some I met with --

>> City Attorney Doyle: No, what this is, the mayor's proposal is to the extent you receive an e-mail or text from an outside person, and the mayor's recommendation is a lobbyist but Councilmember Oliverio wants to broaden that to anybody. Then you would, councilmember would have to disclose that. That would -- the direction is for staff to draft an amendment and come back to council with -- to consider adopting that.

>> Councilmember Pyle: If we hadn't done that for a specific purpose, I would accept that. But since we did, I'm not willing to. Mr. Mayor, I don't know how you feel about that, but --

>> Mayor Reed: Well, the reason I suggested lobbyist is we have an existing firm work with definitions and we've been through that. I think that's a broader definition that Councilmember Oliverio suggested, let me suggest that we take that up in biennial review before council in November.

>> Councilmember Oliverio: Fair enough. Working partnerships U.S.A. which is registered as a nonprofit definitely acts as a political army. With that said I'm the recipient of text messages from that organization. By this line item they are not covered because they're not lobbyists. If we can't say New England, it's unfair not to have them in there .

>> Councilmember Pyle: I would prefer not to do that at this time because this has been put together and I would go with the mayor's recommendation to consider November as the time to do that. Specifically because there may be other items as well that need to be an addendum to this.

>> Councilmember Oliverio: I concur with why -- I appreciate the comments. I just disagree. I think it's pretty well publicized in the Mercury News that the text came from a nonlobbyist, and I think if that's the major problem, then I don't see that really solving the problem. So I'll say it falls short. That's all. Thank you.

>> Mayor Reed: Councilmember Liccardo. Louisiana thank you, mayor. I had a question about the deliberative process privilege and forgive me, I'm coming to it without having endured the many task force meetings and Rules Committee meetings on the subject. But I'm a bit unclear about the interaction of deliberative process privilege and the balancing test. And it seems to me that the application of the privilege is subject to balancing under formulation.

>> Lisa Herrick: Yes, that's true. ..

>> Councilmember Liccardo: It's in the public interest to disclose that but there's no balancing there it's an absolute right I have, to ensure that information isn't divulged. So I'm look at privilege as an unnecessary appendage. If we have a balancing test why do we need privilege? Why don't we say it's a balancing test and get rid of the language that's clearly caused a lot of concern.

>> Lisa Herrick: The deliberative process privilege is definitely a term of art that has come out of court decisions interpreting the balancing test. Whether we call it the balancing test or the deliberative process privilege, it's balancing a certain kind of communication and make a determination about whether or not that should be released. In terms of whether you call it a privilege or just using the blanks test, I don't think it makes a difference, I think you're right .

>> Councilmember Liccardo: There's no real strong oaks to having a blanks test but I guess I'm trying cut through this a little bit. But it's not really a privilege to my understanding if it's subject to that kind of balancing. I guess a point was made, we're enshrining it in law, since 1981 it's been case law so it's law. Why don't we just get rid of the term in our own parlance, use balancing test and I guess it's a question four, Lisa or for Rick, get rid of the term deliberative process in our own parlance, simply rely on balancing test, and if the challenge is ultimately to the Supreme Court, then people can talk about privileges.

>> City Attorney Doyle: Because I think what we envision there are matters which are subject to deliberative process. You know, whether or not it's city council members, I caution you there because we have this mental process principle as well which is sort of a common law doctrine. But the City Manager engage in getting recommendations, whether it's on policy matters, budget matters, and those conversations, or documents where it kicks in, this is modeled after the freedom of information act. Federal law specifically and expressly recognizes a deliberative process privilege. Congress went to great lengths to analyze and create this privilege. It is not written into the public records act but it is recognized by California Supreme Court motelled after the federal law that the privilege exists. It is an area where just because it's deliberative, doesn't mean that you automatically turn it oaf. You have to take the blanks test and say okay, is the public interest in not turning it over, does that outweigh the public interest in knowing the information. I'm trying to use Mr. Frank's common language to try and explain how we would go about this. One way or another, I think you get to the same result. I think what this does though is gives better guidance to the staff and it's clear to the public what the rules of the game are.

>> Lisa Herrick: If I could add also, the public records act requires us to explain when we're using the deliberative process privilege, why we're making to the extend we do withhold information we often say some records are being withheld because they are -- reflect deliberative process. So I don't know, if the concern is using the word privilege, when we're talking about the blanks test, I think that maybe we are just argue semantics. But I think in terms of explaining why a particular communication is being withheld, deliberative process is going to be different from privacy where we would use the balancing test to protect privacy, and we would say we're protecting the privacy of an individual in that explanation.

>> Councilmember Liccardo: I get it is probably not fruitful at this point, to dissect how many angels you can dance on the head of a pin --

>> Mayor Reed: Sam, before you get on, the reason I supported putting the language in the ordinance is we had bad examples of the use of deliberative process and by ignoring it, then it's basically, hey, however it wants to be used, whatever cases happen, people use it. So the language you have in there is a whole paragraph in the ordinance trying to narrow the use of the deliberative process. To explain how it's supposed to be used to put parameters on it. And I thought that was better than just leaving it open, knowing it is a privilege or whatever you want to call it created by the courts but nevertheless it is a part of the law. So all of the language that you see in there is basically trying to choof off uses of the deliberative process priflg so it's written down and we're all going to be gone in a few years and we wanted to enshrine this to institutionalize it and we thought it was a better waive doing it. I know a lot of people have criticized us for doing this but that's the way it was in the law anyway .

>> Councilmember Liccardo: I appreciate the explanation. Thank you for that. I am worried that it is misleading to the public and suggesting somehow that we're putting a cloak over somewhere we're not. I know this really comes down to messaging probably more than anything. The bottom line is we're making decisions on that category of documents that it applies to. I also -- I think that you know, as we've gone through all of these various reforms from the Reed reforms to all the sunshine proposals, I'm mindful of the fact that we haven't always met the expectations that some on the task force and some of the public may have for openness, about specific details of the policy. I don't think that's to be -- I don't think that's something that we issued immediately, assumed to be an indication of failure. I think expectations have increased enormously, as a result of this effort, and that's a natural thing for that to happen. I don't expect we're always going to get it right the first time around and folks have spent the last 35 or 36 sessions just in front of the Rules Committee alone trying to work through all this. And undoubtedly we're going to be back here looking at this again, I know that. But I think this is the right direction and for that reason I'll support the mayor's proposals, and I would -- I also point out, I think that Pierluigi Oliverio makes a very good point about broadening the communications. It seems to me that's a battle that probably takes some considerable thought. Because it's not something worth fighting at this point. We've already got it defined. We've got a clear definition of what a lobbyist is and we can certainly take on that -- analyze just how broad that provision ought to be in the annual review. Thanks.

>> Mayor Reed: Council -- Vice Mayor Chirco.

>> Councilmember Chirco: Thank you. I was one of the just participants in the Rules Committee, got sit through the 30-some Rules meetings, which is nothing compared to what the members of the Sunshine Reform Task Force sat through. So including one who has not spoken, Virginia hotels. But Ed, Bob, Bert, stain and Virginia came to the Rules and participated in the vigorous conversation that went on at Rules that had a dialogue back and forth. And the Rules Committee along with the City Attorney and the staff, that had worked with the Sunshine Reform Task Force, trying to look at, you know, what was current law, what was occurring in the court cases, what was common sense, what was realistic expectations, what was community interest, pro and con. Expectations, financial realities. It was a large task. And I think that what has come out of it is a document that moves San José forward a great deal. I remember hearing, in my first term, not to let the perfect be the enemy of the good. And it stuck with me, because it seemed to capture so much of the work that we do. This is a good product. I won't say it is the end product. It is evolution, not revolution. And I will be supporting the motion. And I thank all the task force members who argued vigorously, for their work, and their thought process. And I respect that process. And we have a better document because of them. And that's why it's important that this be a community-based body of work. So I thank all of you, and it's a challenge, each and every one of us to continue the engagement. So thank you all so much. I will be supporting the motion.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you. And seeing maybe staff or someone on the committee from the task force can answer a couple of my questions. I just want to make sure. We've spent two years looking at this, I think the committee has been tasked with this for two years, is that correct? And I think one of the things that I'm very concerned about and first of all I appreciate the task force's comments, your ten-minute presentation. But I think that I would have liked to have had the opportunity to be able to ask you about those 12 recommendations that didn't get forwarded to the full council and what was the discussion around those. Since I don't sit on the Rules Committee. And I don't know if staff could explain why those 12 have not been forwarded to the full committee. I would believe that it's because the Rules Committee did not want them to come to the full council. And let me just share with you why I think it's important.

>> Mayor Reed: Let me just stop there.

>> Councilmember Campos: Go ahead.

>> Mayor Reed: Those recommendations are in front of the council today. They're just not coming with recommendations from the Rules Committee. They're here, if you want to ask questions about them it's totally appropriate.

>> Councilmember Campos: So I guess mayor my question, I'll refrain it. What I would hope is that we could have a discussion, or actually have the committee, committee be able to give us insight on those 12 recommendations and why we should move forward with them. And I don't know if anybody wants to address those from the committee.

>> Tom Manheim: Councilmember, just for clarification, you're asking, when you say committee, you mean the task force members?

>> Councilmember Campos: Yes, I'm sorry, the task force members.

>> Tom Manheim: Okay, thank you.

>> Councilmember Campos: So I guess what I'm asking, 22%, which comes out to 12 recommendations, that were not recommended by Rules and Open Government Committee or recommended with major revisions, is that correct?

>> Tom Manheim: That's the staff's review of it. I don't know -- let me see if I can get a copy of the matrix of which those are. But that's correct, we believe that when we look at everything that has come through, that includes phase 1 as well as phase 2, that close to 80% of the proposals were forwarded with only minor modifications.

>> Councilmember Campos: So was there a legal reason why these 12 did not move forward or they need more work? I mean, I know that the Sunshine Reform Task Force has recommended that the open government ordinance be subject to an annual review, and readoption, by the city council. And I know that the mayor's recommending that this go to a biannual ethics review. So do you want to reiterate on that a little bit more?

>> Lisa Herrick: Actually the Rules and Open Government Committee recommended that rather than an annual review that it made sense for those provisions that likely will be part of title 12 and ethics review be part of that biennial ethics review. So that is one of the minor rifertions that came out of the Rules and Open Government Committee.

>> Councilmember Campos: It would not go back to the Sunshine Reform Task Force?

>> Lisa Herrick: It would not go back to the Sunshine Reform Task Force and that is not the task force's recommendation.

>> Councilmember Campos: They prefer it go to another committee, am I hearing that correctly?

>> Tom Manheim: If I could clarify and I wouldn't want to speak to the task force's recommendation, but open government commission.

>> Councilmember Campos: The mayor is recommending it go to his bian yule --

>> Tom Manheim: That's correct, as an alternative, the mayor is recommending it go to the biennial ethics review.

>> Councilmember Campos: Did you recommend that it go to the biannual ethics review and your --

>> Mayor Reed: Ed, why don't you get to the microphone so everybody can hear the answer.

>> Tom Manheim: And while he's coming forward Lisa has a correction from summing I just said so --

>> Councilmember Campos: Okay, thank you.

>> Lisa Herrick: Just so the council was to review -- the proposal rks task force's recommendations and so to the extent that there were some understanding that the often government commission was going to do that review and readoption that was not the case. The council was supposed to do that. So instead the recommendation from the Rules and Open Government Committee ask that that review goes to the mayor's biennial ethics committee.

>> Councilmember Campos: But the task force had recommended that it come to the council, is that correct, Ed?

>> Ed Rast: Yeah. The task force has been pretty -- very much involved as mayor and the other members of the Rules and Open Government Committee have, and we've been to, I think we may have missed a meeting or so but we've been to almost all of them and we've made a lot of comments. And some of the changes we agreed with, a few of them we didn't. I think in your discussion of a separate commission, the issue that was brought up on that was primarily the cost. And so the alternative was to move it over to the elections commission. Some of these decisions, I don't -- you know, some of them, without having the whole task force back together been, it would be hard to say what the viewpoint of the

task force on some of the recommendations are. But you know, with the exception of some of the ones that have been brought up today, most of the things have been pushed, have been made a decision on we're pretty comfortable with, especially the phase 1. It gets a little more uncomfortable in some of the phase II but I think we've discussed today some of our discomfort in the phase 2 stuff. We have more work to do at Rules in the coming hopefully not more than a few months, in trying to get the rest of the stuff through it. I think you make a valid point, towards the end when we get to some of the recommendations, it would be very worthwhile to have some of the things -- you know kinds of a summary of what was said and what was approved and what was modified and not approved and at that point in time, I think it would be valuable to have some of the task force members come back and make our viewpoint was at some point in time the council would look at the entire recommendations. And so I think maybe once the Rules and Open Government is down to the end so to speak make that's the point in time that we ought to try and do it. I rep I think Pierluigi's comment and Sam Liccardo's comment that at some point we need to -- this is going to be an ongoing process and we eventually need to get it wrapped up and implemented and come back. I know the neighborhoods view this as an ongoing process, that it isn't over, there will be new stuff coming up whether it's technology or other things in the future that we'll come back and look at it. But I think you need a good point that we need to come back and look at it, before we get to the end. I don't know what the current schedule is, a couple of months I think. The mire or City Manager might have a opinion on it.

>> Mayor Reed: I don't know, we're taking it up tomorrow at the Rules and Open Government committee. We'll see what the view is.

>> Councilmember Campos: Thank you. lisa, the other point I wanted to bring up with you, this would go to another committee for review, is that correct?

>> Lisa Herrick: What would go to committee for review? I'm not understanding.

>> Councilmember Campos: There are other items that the mayor has recommended to go to hi biennial review of -- what is it?

>> Lisa Herrick: I think the mayor can -- a panel.

>> Councilmember Campos: A panel.

>> City Attorney Doyle: The charter requires the mayor on a biennial basis to cover an ethics review, this would fall in that category and that's loibt's gifts or anything.

>> Councilmember Campos: It's a panel?

>> City Attorney Doyle: No, it doesn't require a panel. The mayor makes a recommendation and this city council is the panel. He makes recommendations and the council makes the decision.

>> Councilmember Campos: If I understand, those recommendations come directly to the.

>> City Attorney Doyle: They have been vetted by the Rules Committee and come here.

>> Councilmember Campos: So I just want to go back to my first question and I thank you, Ed for clarifying a lot of that. I think it's important for us, since there are only four of us that sit on the open governmental, Rules and Open Government Committee, and the rest of us don't but we get an opportunity to watch it on TV, I think it would be helpful, we do! An opportunity, we -- it would be helpful for us to understand the whole scope of what the Sunshine Reform Task Force whole dialogue was. And I think Ed said it best, maybe we don't have no -- an outstanding side of a column that really talks about those ideas that you all recommended and what the discussion from the Rules Committee was. And the reasoning on why they're not moving forward, is there a legal reason or if it's just the will of the Rules Committee not to move those forward or if there were recommendations that were changed in the direction different from the task force. Am I clear on that?

>> Lisa Herrick: I think so. The staff memo made a real effort to do that. So I think we did try and articulate what was recommended by the task, and then whether or not there were changes made by the Rules and Open Government committee. If you have a specific question about a particular provision, I think we could certainly elaborate if you wanted us to. And I apologize, I used panel instead of stakeholders. I meant that I think the mayor does some outreach to stakeholders. ..

>> Councilmember Campos: Thank you for that what I want to leave the council with and maybe the public and maybe the Sunshine Reform Task Force is that I know that you've been working on this for two years, and just not completely finalize. And I know that we've been able to implement almost 100 or 100 of these recommendations. I think one of the things that I was puzzled by was how much staff time and community time that has been spent on this, and 34 meetings at the Rules Committee, and I don't even know how many hours you've spent on this. And we know that as we move forward, we're still not comfortable with some of the reforms, and that there still needs to be work done. I would really hope that

we could be bold, and I appreciate some of your comments from the task force. Is to just put those out on the table, and let's have that discussion and move forward. I think continuing to send these to one committee versus another committee and never really having the dialogue to just move forward, and implement them or not implement them, I think is doing a disservice to the public. We've been talk about open government for so long, I think that the majority of the councilmembers would be more than happy to share their public documents, their private documents if they have to do with city business. I don't hear an unwillingness to be open, when we talk about city business. I think we also needs to move forward because we have issues that are facing us that are extremely important and that's creating jobs, make sure we're creating affordable housing in here and that our children have safe places to play, and library hours are open, and I can go on and on and on. So at some point we need to spend as much time as we're spending on this, on other issues that are facing the City of San José. So mayor, I thank you for all the work that you've done on this, and your seven recommendations. But I think that if there are burning issues from the task force that need to be addressed, then I think we need to just bring them forward and move on. Thank you.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. I just wanted to state that I support any effort to have a more open government and I believe that phase II recommendation with mayor's memo is putting a good stake on the grounds so I'll be supporting the motion. And I also wanted to thank the task force members and the Rules Committee for your work. Thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. I really appreciate the discussion up here, that's one of the key exoafnts open government the fact that we're all discussing this and putting a lot of thought into it and asking good questions. I agree with Councilmember Liccardo, that good progress has been made and I think most of us up here have made sentiments in that regard. Insofar as a balancing test and examples, easy example are 911 tape of children, and blueprint for terrorists. There would be opportunities or ways to ensure protection of our children or protection of our infrastructure and so on. And so that doesn't, by removing a blanks test or at least by some of the suggestions that that might be a way to go that doesn't remove the opportunity to ensure our safety. I do agrees with greater sunshine and feel that the mayor, as well as the Rules Committee and staff recommendations, do make key improvements to allow greater sunshine, and as well as raising the important issues of growing technology and I support -- I support those recommendations and I also support the sentiment that has been made by Councilmember Oliverio and others work that has been done needs to be passed and move on, and community and others of us can make adjustments and progress on them . However I do believe that especially if there are just a couple of minor items that would be one thing. But I think these are important components that we're finding some disagreement with or at least have concerns with from the Sunshine Reform Task Force. And there are components that I think will benefit from further discussion now rather than going forward with something that we may, at least I feel may be imperfect without having that full discussion done. Many of the recommendations in regards to the balancing test, although this task force has been going on for over two years and has been some items of months of deliberation, some of the exceptions have had have just been revealed or have been vetted only over a matter of days and not months. So as has been said buy few of us, you know, this is not being done just for us. We're trying to create a product here that can stand the test of time. If there were 11 totally different people up here it is something that we feel confident and feel has a strong foundation to last. And I'm not saying that what's being put forward wouldn't. I think there's a benefit however of allowing for the task force to have an opportunity to vet and to further explain their concerns on some of the -- particularly some of the exceptions or some of the balancing test or some of the aspects of the balancing test that have been recently reveemed. It certainly rather err on the side of openness than cloudiness which acts as shields thanks.

>> Mayor Reed: We have a motion on the floor to approve the recommendations of the Rules and Open Government Committee with the additional recommendations outlined on my memed. That is the motion on the floor and I will bring back as part of the biennial ethics review anything further on that Councilmember Campos?

>> Councilmember Campos: Mayor, I wanted to ask Rick a question from what I understand, is that most of the labor organizations and business organizations are registered as lobbyists. And I thought that was in the policy that we passed, that whether you receive a text or you don't receive a text, if you have any communication, if you don't do it during council then there's a form you fill out to make sure that the public knows that there has been discussions.

>> City Attorney Doyle: Yes and they're --

>> Councilmember Campos: I would just like to understand that there are many opportunities to be able to disclose if a councilmember forgets to disclose during a council meeting, or if their staff had met with somebody. So I just wanted to try to understand that or --

>> City Attorney Doyle: There -- I took a quick look to the closed Website as to registered lobbyists, Danfield and Cindy Chavez. I didn't get a chance to go through the entire list the question on disclosure is one where, yes, you have an obligation. The lobbyists have their own independent obligation. But it wouldn't be captured, I think the recommendation is, it's going to go back to the mayor's biennial review and then a recommendation to just make sure that disclosures are made by the time a vote takes place, that will happen. Whether you forget to do it and you do it later, it may be required but I think the intent as I read the memo is to make sure it's disclosed at least before the vote. And that will be something that comes back.

>> Councilmember Campos: Thank you. And then, to the question that Councilmember Oliverio brought up, does it prevent anyone from disclosing a conversation that they may have had with someone that was not a lobbyist, if they want to disclose it because they feel it's important to disclose it?

>> City Attorney Doyle: To the extent you have developers that don't constitute lobbyists, or not within the lobbyist definition that issue does come up and you know, the one concern I have and I think this needs to be vetted with the mayor's review of the ethics is people have a constitutional right to petition their government. If you are getting Jane Smith or John doe out in the public, who happens to send you an e-mail while you're discussing an item, does that have some chilling effect on a person's right to petition their government? They're John Q. citizen. I think those are things that need to be vetted, wise to send it out and have it come back.

>> Councilmember Campos: So what I'm hearing is people do have a right to lobby their councilmembers and know their voice will be protected so there's no retaliation if they're concerned about that?

>> City Attorney Doyle: Yes.

>> Councilmember Campos: Thank you.

>> Mayor Reed: All right, we have a motion on the floor, all in favor --

>> Tom Manheim: Mr. Mayor, I'm sorry, can I confirm that the motion does include the staff's recommendation regarding the independent police auditor?

>> Mayor Reed: Yes, that's correct. Motion, all in favor, opposed, one opposed, Councilmember Kalra. Completes that item. 4.2, rezoning of real property located on the east side of radio avenue.

>> Councilmember Oliverio: Motion to approve.

>> Mayor Reed: Joe Horwedel does have a comment.

>> Joe Horwedel: Thank you, Mr. Mayor. We did receive an e-mail from one of the neighbors, they asked for a little bit of flexibility on one side, we asked that and we would allow that lot 12 would remain and we would work that out at the permit stage.

>> Mayor Reed: Okay. Maker of the motion --

>> Councilmember Oliverio: America of the motion, sorry, my motion will contain the planning director's comments.

>> Joe Horwedel: Thank you.

>> Mayor Reed: I have a request to speak on this item, we'll take that now, Louise growth.

>> Hello, Mayor Reed and councilmembers. My name is Louise growth. I live at 1127 Lincoln court. My north property line is the project's south property line at unit 14. I was enraged that this project was inspected by the city, based on a plan not approved by the city. I don't know how this happened. The left hand doesn't know what the right hand is doing. I've come up with a resolution to deal with noncompliant setbacks. I had to compromise on this because the city failed to do their job. But I pay the consequences. For city, this resolution a short-lived meeting topic. For my property, the resolution is something I have to live with every day, week, month, and year. The city needs to find and fix the broken process, and stop doing things like this to property owners. Thank you.

>> Mayor Reed: That concludes the public testimony. We have a motion on the floor. Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. Joe, I just had a quick question about process here. Because in developments that were approved before I came into office, this has been kinds of a recurring problem, where there would be a council direction of some kind and then it wouldn't be codified

in the permit in some way. I'm wondering, I know there is a reference in a change in process that's occurred since this was approved. Has that problem been fixed?

>> Joe Horwedel: Councilmember Liccardo, what happened in this situation was, we were processing the development permit and the zoning at the same time. So the plan revisions didn't catch up with where the zoning standards got revised at the zoning public hearing stage. And unfortunately when -- the drawings didn't get fixed in the development permit stage, my staff didn't catch that, the architect didn't make those revisions. So when the new developer picked it up, new staff picked it up, we all worked from the assumption that the zoning documents were correct. We have worked with the attorney's office as a part of the ordinances that get prepared for actions like this, so that the ordinances for second-reading when they come back they do not go forward with second-reading unless the zoning standards have been revised on the drawings. You will remember that there have been a couple of circumstances where we've revised second readings because the revised plans have not been done in time. We've looked at our process to really keep this from happening again. It's something that we've gone back and looked at our conformance review process to see what's going on. It is part of that process that where we do those reviews with processes overlapping each other that has caused this kind of concern and unfortunately it played out in this case. As you heard from the resident they will have to look at the second floor setbacks that will be nonconforming to the original setback. We apologize for that. It is something that should have never happened. But you know, we have worked to minimize the results from that in this case and look at our systems overall.

>> Councilmember Liccardo: Okay, thank you, Joe. I just wanted some assurance that, and it seemed to come up most often, just to move to the examples where we're having these challenges in other projects, where the developer would make some kinds of a nonstandard commitment of some sort in the response of something that came up in the community. The community was convinced the commitment has been made, somehow or other articulated from the dais and then everybody looks at the drawings and so forth and it's not in there. So at this point we feel comfortable that we have a process that's going to ensure that problem doesn't arise any longer or this one that we're facing now?

>> Joe Horwedel: The other thing that's gone on is, we've gone back, what I've been doing in the meeting is much more literal, if there were memo with revisions or specific things that followed out from that meeting. Just so we've got a better discussion of the revisions, Lee Price will tell you, when things are being negotiated on the dais it's really challenging for staff to try and really kind of work down of what got agreed to with that. So we're trying to make sure we memorialize that and if there's questions we're going back and looking at the video from the meeting, listening to not just kind of the final motion but the conversation leading up to that piece to make sure there's clarity on that. Where there hasn't been we brought it back for second reading, saying here's what we thought, here are the revised conditions. Is that what everybody thought it was?

>> Councilmember Liccardo: All right, thanks for your diligence on this Joe.

>> Mayor Reed: I thought it was the planned development zoning in tremendous detail planned development permit, in same detail, essentially doing the same thing. Are you still looking at combining those or eliminating the duplication?

>> Joe Horwedel: We are in situation like this. a lot of PDs we do are big bubbles and at the permit stage they haven't designed the buildings yet. So it's trying to find the happy medium, where everything is cranked down to the last inch, there isn't a lot of flexibility. It makes sense to do that. Assuming all those items catch up with the council. When the council is the approval body of the perm and the zoning, and there's a change that happens at the hearing, there's a lot of cleanup and that affects the drawings. That's kind of that tension piece to how to work through that. We haven't found the solution to that yet.

>> Mayor Reed: Well, that's a PD zoning or PD permit stage or not, ultimately you've got the construction drawings to match the approval.

>> Joe Horwedel: Yes.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: We're probably going to talk a lot about drawings on our next item coming up. But I just wanted to say that this council approved this 18 months ago or something. It was purely a recommendation coming out of the Planning Commission, it was oversight some as Joe mentioned. But planning staff put all their people to resolving this. Because it's not perfect but in the end I.T. was at least, Planning staff was on site each day, I'd heard from the constituents that they were at least maybe not happy but content with what the planning staff did. So I move for approval.

>> Mayor Reed: Further discussion all in favor, opposed, none opposed, that's approved. Our next item is 7.2, a hearing on the application of Ferma corporation for a commercial solid waste and recyclables collection frash. Recommendation for approval, all in favor? Opposed, none opposed, that's approved. Item 8.1, south San José police substation project. All right who's got the lead, Katy Allen?

>> Katy Allen: Thank you, mayor. Joining me at the table is assistant Public Works director, Dave Sykes and chief Davis from the PD. We have a very brief presentation on the south side police substation. We'd like to cover some of our recommendation. By way of background, this is a picture that was just taken a couple of days ago, and I wanted to mention, the substation is the largest project in the Public Safety bond measure. It is a project that has been thought about for many years, back in the late 1980s. To cover the important aspects of this facility to their operation . It continues to be one of the highest priorities in the police department's capital program. Overall construction is going well. It is 70% complete. And we're looking to complete construction in June of 2010. I wanted to, though, mention go tod next slide and provide the council with more direction. If construction is going well why are we before daw asking for additional dollars? When we awarded the construction contract in December of 2010, it became, we were able to address those deficiencies, as construction progressed so did a number of design issues. And in late 2008, shortly, roughly nine months after we had awarded the contract, we knew that we were going to need additional funds to cover this project through completion. The next slide I wanted to give you a little bit of background on some key points that are important to our recommendation before you today, and then we look forward to answering any questions that council has, the majority of the cost increases are as a result of the deficiencies, to address those issues, since March we have worked very closely with our architect and our contractor, rolled up our sleeves literally put everything on the table, looking for project savings. Not to be back before you asking for additional dollars. We looked at unfinished carpeting, no window treatments what happened was we were not getting full value for those savings that in the long run it would cost more or the building or the operation of the facility would be compromised. Based on that and work very closely with Chief Davis and Gary Kirby it was our recommendation because this was a priority project to stay the course, to finish this project, and to do the smart thing, and look at the means by which we could identify funding that would not impact this project in the long run. I'm going to turn it over to Dave Sykes to cover some specification on our recommendation and cover what's come up. But before I do that I wanted to mention overall in general, in this recommendation we've been building bond projects now for eight or nine years. As all of you know, these projects are not funded out of the General Fund. They do have their own funding source from the capital program of over 150 bond projects that we've completed on two occasions we've been back to council to ask for additional funding to address design and construction problems. This isn't something that we enjoy doing, certainly cost increases are never a good thing. But we also are very much committed to completing this project, being proud of this facility, and wanted to leave with council just a quick reminder that this facility will serve our community for many, many decades.

>> Thanks, Katy. I'm just going to go offer the formal recommendation. We are asking for \$5.1 million. We project that this will allow us to complete the project as Katy's described. A portion of that money is going to staffing cost because we're having to put more resources on the job to manage the project and because of the delays, those staff will be out there for a longer duration. As Katy mentioned we went through a very extensive value engineering effort. One of the items that -- sorry, back here. One of the items that will not have an impact on the project operations, the police department operations, and also, one that we would get full value for is the landscaping. So we are requesting authorization to pull out the landscaping, if necessary. If we find out that down the road, other issues have come up and we need another funding source. At this point we do not think this would be the case. But this would have a low impact on the project based on cost and operations. the funding sores are all from the Public Safety bond program. The biggest impact is to the driver training project. That project will be defunded with this action. The rest of the savings, the rest of the funding will be coming from other project savings, interest earnings that have been beyond expectations and we will be using the remainder of the contingency reserve. That happens to make sure the design changes are the right ones, and to make sure that they're implemented properly. Maintaining the buildings mission is the priority. We've already described the effort we went through. But it's important that we end up with a building that meets the needs of the police department and the community in general and we are committed to ensuring accountability to all of those involved in the project. I'm going to turn it over to the chief.

>> Rob Davis: Yes, thank you very much. I'm going to underscore what Katy has said, this indeed has been designed and planned for over the last several decades. We actually did design studies in the early

'80s indicating that we needed to open a sub station and where it should go oop pps gain with this buildings and it doesn't even need to be stayed simply that it's going to be a huge benefit to the department. We know there are issues that are taking place with the construction of the building but I would hope we all keep in mind that there's going to be huge value to our community when we open up that building not only to the resources that it's going to putting out to our South end but the way it will open up space in our current building. Keeping in mind also that the last time we built an administrative building in San José was back in 1970 and the last real injection of capital into a capital project was the communications building in 1990. We don't believe the plans or suggestions made by Public Works are going to compromise this program. I think by and large it is widely seen within the department that this is going to be a great building and will provide huge opportunities and services for us in terms of our service model going forward so we would like to emphasize this is a positive thing by the PD and hoping to deal with that as we deal with some of these cost issues.

>> Mayor Reed: I'd like to ask the first question, and that is, about the driver safety training facility. I think we have to re-think that. I don't think we ought to give up on it. From what I've heard, every agency in the county is in need of driving facility. Perhaps even other counties, as well. Can we investigate turning this into modifier a joint project? I know we were expecting to be able to sell some time to other agencies, can we capitalize that and get them to come in with us as partners? We already had partners on land with Santa Clara Milpitas, but I think we ought to take a look at, see if we can put together a collaborative effort to do this, rather than just have it sit there forever and make no progress. And chief, I don't know if you need to raise that to the chiefs association, or if we ought to take it to the cities association, or I should talk to the mayors. I don't really know what the best way to go about thinking that through is, but I'd like to get your thoughts on it.

>> Rob Davis: Well, clearly, we need to do something, Mayor. We're not happy about the fact that we've had to pull the funds from that project. But clearly, when you're looking at the two projects, which one takes the larger priority, clearly it's the operational efficiencies that we're going to get with the substation. Again, having said that we do need a driver training center, this is mandated training required by the state of California. We have to get recertified on a routine basis, not only us but the fire department as well. So yes indeed, to the extent we've lost the funding on that, if that means reaching out to the people of the county chiefs which I'm fully willing to do, to see if there are opportunities to collaborate then we're wig to do that. We do know also roughly it costs approximately \$400,000 a year based on this training. Based on all the traveling we need do and based on the rental of these other location, so we may be looking at the future how we may be able to do this in team with somebody else. Keeping in mind there might actually be able to recover some of those costs because the need that exists in Northern California for these centers. So to the extent we're trying to be innovative we'll talk to others and perhaps there's a business model that can recover the cost that have been spent.

>> Mayor Reed: I'm thinking more than recovering the cost, I'm thinking about partners, and I mean real partners, where they put up cash up front and help us build this facility and then they get to use it.

>> Rob Davis: I agree, Mayor, I understand where you're coming from, and absolutely, that would be something we can discuss at county chiefs, to see if it's not something not only where they could put capital up but also be able to recover some of the funds, as well.

>> Mayor Reed: That would be good. I hate to take the money out of the driver training facility facility but we don't have much choice. We have to finish this building. We'll deal with the other issues, after the buildings is up. Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. Katy, you mentioned this building is 70% later, additional staffing adds to the cost, is it fair to say?

>> Katy Allen: That's correct.

>> Councilmember Kalra: As the mayor said, we have to get this done. It's really unfortunate. I do want to commend you and your staff for if work that you've had done. The issues that have come up during the course of this project, my understanding it's only, out of 150 bond projects, it's only the second time you've come asking for money because of some type of deficiency or some kind of issue with the subcontractor. And so certainly it's a rare instance, and I certainly wouldn't want the public to think that this is the norm of how the city operates. I think that the city staff has done a commendable job in trying fix the situation and continues to do so and I also think the city attorney's office is doing a good job in helping to guide the process as well. And the police department's been a partner as well in understanding you know, the delays and being cooperative in that regard. It's really unfortunate that we have to go through this process. But again, as I've stated before, I just hope that as we go through process of

working through -- working through the project with the contractor, with the subs, with the architect and so on that we ensure that we really preserve all of our rights but keep all of our records and make sure that all potential remedies at least are available to whatever extent possible. But right now, the main priority is finishing this building as quickly as possible because now it will help save money at this point, it will also get the building up and running as quickly as possible, which will ultimately increase the efficiency of the police department and allow for us to have a safer city and also allow the department to run in a more effective manner. As we know, what's been allowed to happen for a very long time, the largest city in the country without a substation, without another base and so, I think it's critical that we just get this done and then as the mayor said deal with the other issues as quickly and as effectively as possible in terms of trying to reclaim some of the actual resources expended during the course of this project being done. And I do, you know, it's in my district, I drive by it every two, three days, I see it coming together and I look forward to the practical substation in our city, not just district 2. So with that I'd like to maim a recommendation to support the staffer recommendation.

>> Mayor Reed: Okay, we have a motion to support the staff recommendation. Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I just had a very quick question. Whenever I see the word dispatch center, I people, gosh, I hate to let that go. The landscaping, just what are we look at that?

>> Katy Allen: Just under \$900,000. At this point, the landscaping is in. We would only look to that if we have to. It gives us a little cushion if we needed it. Right now it's in the project.

>> Councilmember Pyle: Okay, can you -- I mean for 25,000 -- let me ask you this. I've seen, I've been in, and taken tours of the dispatch center we have. Do you feel -- I guess this is more for the chief -- do you feel that that's adequate for our city, or would it be better to have another dispatch center?

>> Rob Davis: Well, we do have our dispatch center, which is located down at the main police compound. The center we're building at the police substation will have the capacity to be able to allow for dispatching out there in the event of emergency.

>> Councilmember Pyle: Will the space be there, but it won't be completed?

>> Rob Davis: No, my understanding is that it will still be -- the infrastructure will be there to use if we need it but we're not planning on dispatching from that center on a routine basis. We'll still use our current dispatching center to dispatch all the units.

>> Councilmember Pyle: Okay, thank you, got it.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. First, I don't think this is something we wanted to see come. But while I'm always disappointed when our projects incur cost overruns, I'm especially disappointed in the amount of additional funding that is required for this project. Because as some of my colleagues have stated, we are now forced to sacrifice long-held public safety priorities to meet the cost overruns for this project. While I realize that much of the blame for this overrun lies with the architect, and thank you for sharing that with us, Katy, I'm having extreme problems with our lack of accountability for those who the city partners with, I think we had a discussion about that. I stated this before. We should have checks and balances with these projects where we are also catching major mistakes, in the design documents. And I know that in this project, there have been minor things that should have been caught, like labeling a holding tank as 1500 gallons, rather than 15,000 gallons. Those are mistakes that just shouldn't happen. And I'm not sure how we're moving forward with the new projects so that those things don't happen. The public shouldn't have to tolerate these mistakes, especially when they've approved tens of thousands and millions in the bond project that we -- the bond that we brought before them. And I'm going to support this. Reluctantly. It's already in the works, and as I stated before, I really don't have a choice, because I don't want to see the overall vision of public safety go back. I know how important it is to move forward. And chief, I'm really looking forward to the fact that a few of my colleagues did talk about some of the things that are going to be losing funding to support this project that we think of creative ways to still move forward, and make sure that the Public Safety priorities in the City of San José continue to be a priority for the residents of San José. Thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks, mayor. Katy, I was hoping to put this a bit into context. Roughly how many projects has your team completed with other contractors, and private sector, during the date of investment over the last decade or so since these bonds were passed in 2002?

>> Katy Allen: Approximately a thousand.

>> Councilmember Liccardo: How many times have you come back to council for additional money?

>> Katy Allen: I believe outside the bond program, our employee parking garage, we were challenged to work through some delays that occurred. But I think outside the bond program, it was the two in the bond program and the two being Camden community center, the police substation and then the employee park garage, on those three projects.

>> Councilmember Liccardo: So three projects out of a thousand. Okay, that's helpful. The other questions I had related to the green roof that's been deferred. I understand that we're saving about \$100,000 by scoping that down. Is that roof potentially solar-ready? In other words, down the road if we get into a PP -- power purchasing agreement with the solar company can we go in a different direction, throw some panels on there and everybody go home happy?

>> Councilmember, yes. The building has been plumbed if you will for future installation.

>> Councilmember Liccardo: Okay, good. This could be a blessing in disguise if that option proves to be a better use of our resources. Thank you, and I know this is very, very unfortunate, because there are many important projects, particularly like the East San Jose community policing center and the driver safety training center that I know we're foregoing or deferring now as a result. I expect that when this bond fund is exhausted which is going to be very soon I .we're going to look for other ways to probably go out to voters to continue building as the city continues to expand. And I expect these priority projects will again be priority projects, at the front end instead of the end. I expect voter confidence will continue and we'll continue to build. Thank you.

>> Mayor Reed: That includes the council discussion. I think I have a cards from the public, Ross Signorino wants to speak on this matter.

>> Ross Signorino: Thank you, Mr. Mayor, members of the council. I don't think this -- this subpolice station comes in dispute, whether it's need or not. I'm sure that it is needed. I'm not a police officer. I'm not in law enforcement. But I accept what the authorities say, say that this is needed and it's good for the whole city. But at the same time, I've come to many meetings here and listen to all of you discuss the budget, you discuss things back and forth and tweak things, try to balance the budget, try to get as many dollars as you can to take care of the budget and not keep going over the budget and here, all of a sudden we come up with a police substation that already, we have something like \$5 million cost overrun? A design flaw? Who looks at these -- who looks at these blueprints, how does this happen, things like this? You could understand here and there, maybe couple hundred thousand dollars overlooked, these things you maybe have to repipe some of the electrical work, ventilation system and things like that. But you're talking \$5 million design flaw? And who's at fault? We say the architect? We have no recourse whatsoever? Doesn't he carry any kind of insurance saying that he can protect the city? Don't we look for ways to protect the city? And here we come up with \$5 million and we talk about a crucial budget that we have, even though you pass over this very quickly, you didn't ask a lot of questions, one or two here and that was the end of it and that went on. And here, I'm probably talking longer than all of you combined questioning this, this design flaw. And this \$5 million that we have to put into it extra, and Katy says here, maybe we can hold up on the third floor. Well, we can't. Of course it's going to cost much more. We have to finish the project.

>> Mayor Reed: Sorry, your time is up. I would like the City Attorney to address our legal -- potential legal opportunities and when and where is the potential to discuss those.

>> City Attorney Doyle: We have a contract with the architect, we have a contract with the general contractor and we have a contract with the construction manager. All of those agreements contemplate potential remedies. We need to sort through all of this and get through the project before we exercise any of those remedies, and let me just say that yes, there is insurance in the process, as well. So I think that just sort of sums it up.

>> Mayor Reed: Okay, Ross, I hope you heard that. We have a motion on the floor to approve. All in favor? Opposed? None opposed, that's approved. That concludes the business. We have only the open forum left. I have one card, Ross Signorino.

>> Ross Signorino: Thank you, Mr. Mayor. This is so quick I think I almost forgot what I wanted to talk about here. With Tesla moving into automobile -- I hope you pronounced that correctly, moving into Palo Alto, a big disappointment we didn't get it here, it's close by, maybe we can negotiate some supporting industries from that auto business will come from San José.

I think that would be a very good thing. Also, taillight, you know, I want to get back to that point of make San José not unknown. What I think you do enough, I don't hear anybody mentioning this, you should put in those ads wherever they may be, in magazines, that San José is a great place to live or to raise a family or to communicate with all the different facilities and don't be ashamed that San Francisco

overshadows us. You can say in those ads that we're close to San Francisco, close to Monterey, Santa Cruz, we're close to the mountains all over here, you can go to the beaches in no time, in the winter time you can go skiing in Tahoe and you can go a lot of places. The weather is exceptional here. That's what you should be emphasizing, but all you're saying, San Francisco overshadows us, no, it does not. Take advantage of all these things you have here. This is unusual. Within a short drive you can get to a lot of places here. This is what you have to emphasize. San José a great place to live. Thank you.

>> Mayor Reed: That is end of open forum and that is the ends of our meeting. We are adjourned.