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>> Mayor Reed: Good afternoon. I'd like to call this meeting to order. This is Rules and Open Government Committee meeting for August 24, 2011. In a few minutes we'll also convene a specially noticed council meeting so that as many councilmembers who wish to comment on one of the items on the rules committee regarding incubators can be here and participate but we're going to work our way through the Rules Committee agenda in order, unless there's something that needs to be noted. I did have a request on item H-5 which is a revolving door ordinance from Edith Ramirez that that be dropped off of today's agenda while we think about what -- if we're going to change the process or the rules.

>> Dennis Hawkins: My understanding Mr. Mayor we'll defer that and bring that back next week.

>> Mayor Reed: Okay. Deferred to next week then whatever. Don't have to deal with it today I guess is a short answer. Anything else on the agenda? Right? Let's start with the August 30th council meeting agenda. Anything on page 1? Closed session starts at 9:00. We're going to have a long closed session agenda. It may be that we have to go back into closed session after the rest of the agenda is done. We won't know until we get there, I suppose. Page 2 or 3, any comments or changes? Page 4 or 5?

>> Councilmember Constant: Mr. Mayor, I just had a quick question on 213. I know we have the tree ordinance update coming. Is there any reason that these aren't coming together, since they're related? I think it might provide context for the discussions, since one affects the other and vice versa. Or is this time-sensitive that we need to be doing it now?

>> Ed Shikada: I believe it is not time sensitive. In talking to the Department of Transportation, they believe the adjustments to the list, adding some that are owner supported as well as removing trees that are dead or dying was a simple act that they wanted to proceed with. But if it's the will of the committee to certainly put them together at the same time, I think the ordinance is actually going through the transportation and environment committee. So it's a little more protracted a process before it will come back to council.

>> Councilmember Constant: Okay so I guess this is more than just updating a list. You are saying it had to do with dead and dying as well or is it a tree ordinance the one that's dealing with it?

>> Ed Shikada: It's the tree ordinance that will deal with any methodologies, and how we change what gets on the list. But this simply updates the list to remove trees that are dead. As one category. It also adds a few trees that the owner of the property had requested be designated heritage trees.

>> Councilmember Oliverio: Councilmember Constant, I think this is more about specific trees versus species of trees which would be much more broader impact. The policy which would come back out of T&E would be how do we manage all the trees going forward. This is on to specific heritage trees.

>> Councilmember Constant: Okay, I wasn't familiar so I just wanted to see what the difference was.

>> Mayor Reed: Okay, so no reason not to deal with this on this agenda on the 30th. Anything else on 4 or 5?

>> Dennis Hawkins: Mr. Mayor, later we'd like to discuss the flow of the agenda with regard to 3.5, the elections commission interviews, and 3-- I'm sorry 3.4, the priority-setting and how to arrange all the items.

>> Mayor Reed: Okay, 3.4 is the ordinance priority setting and elections commission interviews is 3.5. We have five people that are going to be interviewed by the council, appears, that's about an hour to hour and 15 minutes.

>> Dennis Hawkins: That's correct.

>> Mayor Reed: Time frame.

>> Councilmember Oliverio: Not before 4:00?

>> Mayor Reed: Well I think we could probably do it early in there, it's practically first on the agenda anyway so we could just set it for 2:00. That way the commissioner applicants are less inconvenienced in terms of time.

>> Dennis Hawkins: And then would you want to do the rest of the agenda and come back to 3.4? Or --

>> Mayor Reed: Yeah I think doing the ordinance priority-setting stuff after we've done the rest of the business is okay.

>> Dennis Hawkins: So we'll note 3.5 is 2:00 p.m. and 3.4 to be heard last.

>> Mayor Reed: Yeah, that works.

>> Councilmember Oliverio: Let me ask a question on 3.4 for City Manager. So are you going to be asking the council to -- are you expecting one sweeping motion I mean, in my experience it's difficult to manage 11 priority rankings versus one motion. So are we actually going to --

>> Mayor Reed: I've got a memo on that with my recommendations on that so I'd like to come back to that after we get all the way through the agenda items and then City Manager can answer that question.

>> Councilmember Oliverio: Thank you.

>> Mayor Reed: And we'll have -- because there is a staff report out I think already on that, right? Okay, so anything else on 4 or 5? We'll come back to the ordinance piece. Page 5 or 6, anything else? That's it. A short item agenda except there are a couple of things on there that are going to take hours. So I think it will be a full afternoon and we may have to go back into closed session when we get done. I have some requests for additions. Councilmember Chu's travel to San Francisco for league of cities. Councilmember Chu's travel to long beach, league of cities. Presentation of a certificate of achievement for excellence in financial reporting and

distinguished budget presentation award and another certificate of recognition. I think these are all from the same organization, right? Government finance officers association. Essentially do these as one.

>> Ed Shikada: Yes. That would be fine.

>> Mayor Reed: One event. Different people doing good work being honored by the same organization. Get everybody recognized. Any other changes or additions? Let's go back and talk about how we handle the ordinance priority. Staff report out with the manager's recommendation for the top 10, and what I'm recommending is that we would move seven of those, as practically done or in progress. But there's three more that could be added, dropped, moved, so that we get the ten. And so I would anticipate that we'll have staff presentation, on the status of all this, a discussion of the individual ordinances, and then ask the council to pick three. And have paper ballots, pick three, give them to the clerk, run a tally, top three are added to the top ten list. And then we move on and do it again in February, probably, as other things get completed. So that we're not - there's no reason to try to prioritize the top seven since they're well underway and some of them are almost done. So that's my idea of how to do it so I wanted to let the committee have a chance to discuss it. Vice Mayor.

>> Councilmember Nguyen: Thank you, mayor. I think that's an excellent idea. I think we should have an opportunity to vote on any of the ordinances that we feel is sufficient or appropriate for us to discuss. I think going with the vote is a way to go so actually wanted to make a recommendation to approval your memo.

>> Councilmember Oliverio: Second. Thanks for that. Anything that forces us to make a choice is best.

>> Mayor Reed: On the motion and second, all in favor, opposed, none opposed, we'll do it that way then. At the end of the meeting. Anything else on this agenda? I think we're done, with the 30th. September 6th, whoops, September 6th we don't have a meeting scheduled but I'm anticipating we may need to have a closed session meeting to continue the work we don't get done on the 30th. There's a lot of decisions that the council needs to make and so we should put a hold on that for sometime in the afternoon on the 6th. Let councilmembers know

that it's a probability although it depends on how much progress we make on the 30th, on the agenda items there and whether or not we can go back into session afterwards if we have time to do that.

>> Dennis Hawkins: We'll issue a memo -- I'm sorry an intended for the 6th with the closed session. Would you like a 1:30 or a 2:00 start-time?

>> Mayor Reed: 1:30.

>> Dennis Hawkins: 1:30.

>> Mayor Reed: It's our favorite time.

>> Councilmember Constant: It's not exactly on topic but is there a Rules meeting next week without the council meeting next week or is there a rules in lieu?

>> Dennis Hawkins: I think we have a regular rules meeting. So we would be looking next week at the September 6th and the September 13th council agendas and the 13th looks like it's going to be a very full one.

>> Councilmember Constant: Okay, thanks.

>> Councilmember Oliverio: We're dropping the study session hold on the 6th?

>> Mayor Reed: We have nothing on the way of the study session, filled with the same study session so we can finish the work that needs to be done. Right then on to the Redevelopment Agency agenda for August 30th. Do we have anything, I'm sorry. We don't.

>> No.

>> Mayor Reed: Nothing at this point. Nothing until the state does something else that we need to react to, probably. Legislative update. Would be next.

>> Betsy Shotwell: Thank you, mayor, Betsy Shotwell director of intergovernmental relations. One piece of good news from Sacramento. Legislation that the city took a formal position of opposition to, SB 931 which would prohibit public agencies from using public funds to pay outside consultants or legal advisors. For the purpose of counseling the public employer. I know the city attorney's office is very concerned. Senator Vargas has decided to not move that bill forward. There is some good news with regard to some of these local control issues and legislation that's out there. Nevertheless it's important to have this position on the record. So if it should change it into a different number or different house of origin next year we'll be prepared to deal with that. And that's all I have for Sacramento.

>> Mayor Reed: Thank you. Mr. Wall you've got a card here to speak about this legislative update about the catalyst update, that's not state legislative, so we'll just hold it to open forum you can speak on it then, unless it has something to do with the state legislation. (inaudible)

>> Mayor Reed: Oh, okay, there is no redevelopment agenda for the 30th. Next item is AB 1178, solid waste place of origin.

>> Betsy Shotwell: Thank you. This bill in a nutshell would preempt local ordinances that restrict importation of solid waste and would allow privately owned landfills to accept garbage and other waste from anywhere. Clearly another local control issue. Jo Zientek is here from ESD if you have any questions.

>> Councilmember Constant: Motion to approve opposition to 1178.

>> Mayor Reed: Motion is to approve the staff recommendation in opposition. All in favor, opposed, none opposed, that's approved -- I'm sorry.

>> Betsy Shotwell: If we could have a one-week turn around.

>> Mayor Reed: Before we call that vote, Mr. Wall do you want to speak on that one, AB 1178?

>> David Wall: Good afternoon. I want to read this into the record. "This bill would prohibit an ordinance enacted by a city or county including one enacted by the voters from restricting or limiting the importation of solid waste into a privately owned solid waste facility based on place of origin." This is really interesting because it then allows the reverse of San José being an importer of garbage to maintain your nine-par development for your anaerobic digester and point 2, we're seeing repeated different departments coming in to lobby different types of legislation. This shows -- this is not right. All this type of information or these laws should go through the office of the City Attorney, with the requisite charge-back to the funding source. To keep your department directors doing what they're supposed to be doing, their jobs. Now this importation of garbage, Mr. Mayor, is also interesting for nine par with reference to the habitat plan, and the nitrogen deposition that's going to take place with all those garbage trucks. Thank you.

>> Mayor Reed: That's the public testimony on AB 1178. All in favor, opposed, none opposed, that's approved.

>> Betsy Shotwell: Thank you. That will go on one week turn around on next week's agenda. Meeting schedule, we already talked about the 6th. Public record, anything from the public record?

>> Councilmember Constant: Thank you, Mr. Mayor. Just wanted to pull item A and noting that we are going to be having a discussion on commission and boards and such here at Rules Committee just to make sure that that is -- the clerk brings that for those discussions. I think there's a lot of information there, and input from the senior commission, which will be important when we get to that topic. And then a motion to make that referral and note and file everything else.

>> Mayor Reed: We have a motion. I have people that want to speak, let's do that now, David Wall.

>> David Wall: We have item B, in which management decisions of San José Mercury News which they failed to inform the public. This is somewhat interesting since they've given unprecedented access into public policy formation here at City Hall and your administration and I just wanted to bring that to the record. Item C, I'm very curious if the City Manager who is in attendance today is going to retire soon, within -- before December 31st of this year. There's so many of senior managers that are leaving the ship, I just don't know. Especially, Mr. Mayor, since the entire Rules Committee gifted a certain amount of sick leave that I think it's prudent just to ask. I mean, like to know who's in the waitings. If you do have the City Manager retire, someone able to fill the shoes. The number of motor homes showing up on different streets is incredible Mr. Mayor. These people are living in these motor homes, the issue of sewage discharge and garbage discharge associated with this form of nomadic living I think is something that the police department should look into. Thank you.

>> Mayor Reed: Marie Hader.

>> Yes, I'd like to speak concerning the need to continue to have our senior citizens commission. The senior citizens commission provides a connection into the senior population. Each member of the senior citizens commission attends the senior centers, advisory council meetings. They also attend other community meetings and organizations concerned with seniors. And bring back information and exchange information with these people. This regards the seniors' concerns and their efforts to meet those concerns themselves. The personal connection also keeps the population aware of the city council's connection and interest in their seniors, and in the concern about their seniors' issues. While at the same time, providing a functioning senior citizen commission avoids bogging down the senior council -- the -- avoids bogging down the council's staff with researching the seniors' needs. And it also considers these issues of the seniors before they become volatile, such as the boutiques have become volatile in between times that the commission meets. Then the senior commission is also suggesting ways that it can be run with reduced expenses considering what we're all facing these days.

>> Mayor Reed: Richard McCoy.

>> Good afternoon, mayor and council. I'm here to support the continuation of the commissions and boards based upon the fact that they are needed very well by the community and a lot come up. The senior commission by itself does support a lot of programs and provides a lot of information and advice to the council. Much more than many of the other commissions. If it's a matter of cost reduction, as the councilmember would suggest, the citizen council has reduced its staff costs this year 18%. But if you were to take that and expand it out to all the commissions and boards, you're talking about an average cost of about \$2 million put together. And we believe that that cost could be cut in half, and still maintain the integrity, support, and information that the commissions and the boards do provide to the staff, and to the council. So we'd like to support the continuation of all the boards and commissions, but perhaps at a reduced staff level, still continue the work. Thank you.

>> Mayor Reed: I have one more card, handwriting's difficult for me to read but I'm guessing Martha O'Connell. Just because there's an M and an O somewhere in there.

>> Martha O'Connell chair of the senior commission. Because we took the letters of councilperson constant and Oliverio seriously regarding the elimination and consolidation of commissions and the repeated concerns expressed by the mayor at Rules, we have submitted a lengthy report which you will find in the public record. The record clearly document A clearly indicates that we are one of the most active commissions in the entire city. We are also the leading voice for seniors since the office on aging, the retired senior volunteer program, and the senior care companion program has been eliminated. Rather than reiterate the report I would just like to address two issues that came up since I wrote it. Councilperson constant told me, and if I misquote you can correct the record later. I believe that there wasn't one incident where a city staff member quoted a commission when they wrote to the council making a recommendation. And I would respectfully request that that's pretty shocking and astounding because the commissions are making recommendations. And if they're not included that's the fault of the staff not the commission. Secondly, on page 2, bottom paragraph, regarding the county care commission, an update, I now received the public records about this commission for the last three years and in 2010, even though they're supposed to met monthly, they met twice because they can't get a quorum. This year I'm now a member of that commission and I always go. But there have been three meetings they haven't had enough people there to

hold a meeting. So if you're thinking of abolishing a city commission because you got a county commission I can tell you as a member of the county commission they're not doing anything. Thank you.

>> Mayor Reed: That concludes the public comment on the public record. We have motion to note and file with the one referral to staff. All in favor, opposed, none opposed, that's approved. I think the next action item is having to do with the incubators. We have a memorandum from Councilmember Liccardo, requesting addition to the auditor's work plan, a lot of people wanted to comment on that. So we've noticed a special council meeting so that we can have more than five of us in the room at the same time. And participate in the conversation. So this is -- well, this is a Rules Committee agenda item and Rules Committee action. This is a chance for everybody can weigh in because we've noticed the sort of joint meetings. So I would anticipate that councilmembers are here going to want to speak. Councilmember Rocha is not here but we have paper from him and a memo that we got. I don't know if that's everybody or not but pretty close to everybody is here and we have some other memos from other councilmembers as well. So we will start I think the way we usually do. Councilmember Liccardo, this was your memo. You want to speak to your memo or did staff have something that they needed to point out before we go?

>> No, just be happy to address any questions that come up.

>> Mayor Reed: Okay, Sam.

>> Councilmember Liccardo: Mayor, I think the memo speaks for itself. I would be happy to respond perhaps after I know there are several folks who wanted to speak earlier and so perhaps allowing them a chance to do so would be fine with me. I certainly have no objection to a deferral, consideration of this issue on -- as an audit. I simply would ask that it be considered for the reasons I've described in my memorandum. And really, for larger reasons having to do with how it is that particularly in this time of scarcity, we assess economic development efforts. Knowing lessons that we need to learn from past efforts, that how relevant those are going to be. And perhaps I could be a bit more descriptive, just as we think about the challenges of relating information, in the economic development context, we have seen numerous examples, incubators is simply one in which there is a

particular sensitivity around transparency. And we recognize that whether it was Team San José, and information that might scare away potential customers, or if it's challenges around the tax increment reporting at the Redevelopment Agency and how that might have impacts on bond ratings, there has been a considerable sensitivity around transparency and its affects. And obviously, in a council that needs to operate in a public setting and needs to make decisions involving taxpayer dollars, we need transparency and information to make those decisions effectively. What I think would be important for us to invite is a conversation, a frank conversation, about being frank. That is, how we can get information in the hands of councilmembers who need to make decisions about scarce taxpayer dollars. Knowing that there inevitably is going to be sensitivity about how that information may be portrayed in the public, and how that may or may not impact our economic development goals. And those are often very legitimate economic development goals. It seems to me that an audit is an appropriate response to obviously a report that none of us knew the existence of two years ago. We want to be able to at least analyze whatever allegations are raised in that report, in a less political setting. I think as the auditor can clearly do as an independent party looking at this more objectively. And hopefully, from that, get some lessons that we can apply moving forward as we think about economic development here in this city in the next several years. And really, focusing on how we can ensure that council gets information it absolutely needs to make sensible decisions with its very scarce resources. You know I said I wouldn't speak and here I am speaking. I guess the other things -- I just would want to emphasize if I could, it's important to recognize what I'm not trying to do here. I want to ensure that the committee understands, this is not about the current team at redevelopment. Clearly, Richard Keith is more than forthright in providing information when I asked for a copy of the report I'd first heard about it from Don Burris, I asked Don and within two weeks Richard provided a report and I appreciate the fact that he's been very forthright about trying to find information in the files and certainly it's not about our economic development team. Our office of economic development doesn't have anything really to do with incubators. It's really kind of landed on their laps in the last few months and certainly isn't about them. And this isn't about private sector funded incubators, either. There are many very effective ones that operate throughout the valley. And in our own downtown, just recently we've seen nextspace open in the last couple of months, they're completely full, they've got great innovative companies like dish crawl and now Flextronics has landed there, Irish innovation center another example, doesn't receive a dollar from taxpayer sources but they're very successful. So private sector incubators can be very successful, I don't doubt that. What this is really about is trying to learn some lessons, I

think some painful lessons that we need to learn about how we get information in the hands of decision makers who since the time of this report finished have made three separate budgetary cycle -- three separate sets of decisions around budgets or three separate budgetary cycles without ever having this report in their hands. I think that is a great disservice to the democratic process and how things should work in the city.

>> Mayor Reed: Before we hear from other committee members or councilmembers on this, I wanted to add a couple of things just to talk about the chronology of how I think this thing gets played out. I've got a memo that I put out with recommendations of how we ought to process, and the decision making process itself. But really, we started back in April, April 29th, 2011, on a memo that I wrote regarding the financing plan for CRAF payment which was approved by the council on May 3rd. And that memo bullet numbered 5 it says direct the executive director and city manager to designate staff to work with representatives of the San José State University Research Foundation, develop a transition plan for the incubator program, before the agency's lease obligations expire. And then in June, with the June budget message, council continued to move in that direction. Consistent with the need for a transition plan. That transition plan report is scheduled already on the work plan for the Community and Economic Development Committee meeting in September. We'll come back to that Committee meeting. So what I've suggested with my recommendations is that in addition to that September meeting, where the CED committee, that we add another item to the November CED committee meeting, to have that committee make recommendations to the council on the transition plan for the incubator program, add to the council agenda for the last meeting in November, or the first meeting in December, approval of a transition plan for the incubator program, and along the way, circulate the incubator report that Councilmember Liccardo just referred to so the committee has it in September when the CED committee reviews the status report. And that the council has it when the council considers the transition plan just as we would any other part of a staff report. And then finally that we defer this committee defer until after the Rules -- after the -- actually I see a little confusion in my memo. After the CED committee considers the transition plan, that the Rules Committee take up the question of whether or not to do an audit, or further -- or further work in terms of the work plan. And so that's the sort of chronological sequence I think we can deal with these issues. And we may or may not have to have audit work. And we'll see how the CED committee work goes with the transition plan that's coming to them in September. With that I'll ask other committee members who have comments. Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. First I wanted to thank Councilmember Liccardo for bringing the report to the light of day. Because I hadn't seen it and I'm pretty confident none of our colleagues had seen it. And I think that I know the first question I asked myself is, I wonder what other reports could be out there that we don't know about. And I think that in an organization this big, when we have a lot of things going on, and a lot of different consultant contracts that are approved throughout the organization, that there probably is a lot of work that's done that we may or may not see. And I know that we had discussions about this in the Public Safety committee about staffing -- staffing reports that have been done in the police department that hadn't been circulated, there are a lot of different things that I think we have lessons that we as an organization can learn about process, even if it's not anything about this particular report. And I haven't seen the report so I can't opine either way my knowledge of it quite frankly is what I garnered from Sam's memo. I think that as an organization, we never should be afraid of an audit no matter what the subject is. Because we very rarely go into an audit with a got-you mentality. In fact I don't think I've seen any of those since I've been here. Our audits are performance audits and we're looking for a way to increase our performance as an organization entirety and the performance of our individual departments or independent groups that we work with going forward. And I think that's important and I do think that an audit, in addition to the things that Councilmember Liccardo has indicated that we may get more clarity on in the audit, I think we have an opportunity to learn more about how we process and form around consultants' reports throughout our organization. So that we can ensure that when we have work that's being done, whether it's critical of us, or praising us, that we have the ability to make sure that we, as an organization, and we, as leaders of that organization, have access to those reports so that we can continue to make ourselves better going forward. I think it's also important in this particular program that we recognize that a lot of the programs that we have in our city precede most of us being here. So we, as individual policy makers, may not have the historical context of what got these things going in the first place. What they have or have not done. And having any reports that we have, whether they're just released or previously released, I know I use those to learn more about the programs that I can educate myself and be a better policy maker. I think it's important that we come up with a process so they're available. I appreciate the mayor's memorandum and I think it gives us a structure of moving forward. I do think in the end that I agree that we should have an audit. I'm not opposed to stepping through this process so we have an orderly discussion and that the CED committee whose jurisdiction I

guess handles this particular issue, has an opportunity to review it. But maintaining quite frankly the jurisdiction of this committee in determining what gets audited and the work loads of those audits go with the auditor. So with that, I support the mayor's overarching memo and Sam's underlying memo.

>> Mayor Reed: Vice Mayor.

>> Councilmember Nguyen: Thank you. Mayor if I may I'd like to hear also from Councilmember Herrera who also issued a memo and she's also the chair of the CED committee.

>> Mayor Reed: Okay, I was going to go to her after the committee had a chance to speak. But it doesn't really --

>> Councilmember Herrera: I'm happy to hear the rest of the committee's comments.

>> Councilmember Nguyen: I'd like to hear -- her memo and I'd like to speak to that as well.

>> Mayor Reed: Since we're adding things to the CED work plan committee. Rose.

>> Councilmember Herrera: Thank you, mayor. First of all I want to say this -- I don't see this as any kind of a showdown or any kind of a you know a battle here over whether or not we should pay attention to reports that are provided for us that have been done by consultants to evaluate programs. In fact on my memo, I support the idea of implementing a policy that all consultant reports that evaluate program performance, with recommendations, should be circulated to council regardless of the size of the contract. I think that's very important. So I certainly think that those reports should be circulated so I'm glad to hear Councilmember Constant agrees with that. I think also everybody on this council is concerned about how we pay taxpayers money. I know David Wall was about to comment on the catalyst fund. I was concerned about how that money was spent and wrote a memo and eventually the remaining money in that fund was used to there driving companies to bring jobs to San José including Maxim. I'm very concerned how we spend money that we spend it wisely and it does the josh of

economic development when that's what we say we're doing. I also just want to say that just this Monday in economic development we heard a report there that talked about the kinds of companies that actually do bring jobs to, in this case the reports on Santa Clara County which most of the time that's where our reports are from and we sort of have to figure out where San José fits in there. But in Santa Clara County, 95% of the companies' growth is 40% startup and 55% growth of existing companies. So 95% is from companies that are here or starting here. They're not from our efforts to go and convince some company in some other location to come here. And why is that significant? Because the incubator program's part of an initiative to get startups going and growing in San José. And I think we have to be really focused on making sure that whatever opportunities we have from those companies that are here, that we take advantage of those opportunities to keep them here and to leverage them. The question really is whether they will stay and grow. The fact that the incubator assessment report was not released in 2009 has been the focus of scrutiny for the past few days. And I don't believe that this report was hidden, or kept away from the council, as Councilmember Constant just said there's a lot of reports that are produced. A lot of consulting reports that are never circulated to the council. I don't know why this one didn't make it to us but I can tell you that after I have read it, and there are some points in it I think are valid and there are some flaws in its methodology. Some I point out in my memo and you can read through it, feel free, you will notice them as well I'm sure. Maybe it's not ready for prime time in some ways is maybe a reason it wasn't released, I don't know. I do think at the time this report was put together, the RDA director Harry Mavrogenes was out on medical leave, that may have to do with why it wasn't released. But for whatever reason it wasn't released, there is a perception created, not saying that is deliberate, but somehow there was a perception that this report was hidden and I think it makes it all more important that we move forward with the idea that any report that's done that we paid for and in this case we paid about \$72,000 for this report, if it's doing an valuation of a program here that we're trying to understand I think it should be released. If nothing else, in the spirit of sunshine and accountability and perception. So I think that's very important. I support the mayor's memo that the assessment should be considered by the academic development committee in the context of us looking at how we transition the incubator program forward and that any decision on adding this to the auditor's work plan be deferred. We're sort of basing, asked to be basing a decision to sends to the auditor based on this one report that I think we need to have a chance to look at and understand the value of it before we make that kind of a decision. Because we are then to make a decision to use auditor's resources which are also precious. All of these are scarce resources

to focus in on this particular issue now. And so I do think that takes some evaluation. Any lessons learned and there can be some lessons learned obviously from any program we've been involved with. I have suggested that we apply those to the environmental innovation center other programs. And I think we should always be applying lessons learned. So if there are lessons in this report that can be applied, we should use them. But I think the thing that we should focus on, because there's an important track that I think that we've lost in our discussion in the last few days and that is how do we -- how do we seize opportunities that are here right now to grow the companies that are here? And the incubator that I've been focused on and I know a lot of you probably haven't had the chance to read my report, because it just came out today, and I apologize for the length of it. But I take it very seriously, and that's why I wrote so much background. A lot of that hasn't been put out. We have created a new bioscience industry in South San Jose in Ash's district in Edenvale with the bioscience center, and I think it's very, very important what happens next. We have companies there that if we form the right relationships, if we work with the incubator operators and director out there and work with the colleges, work with companies, work with foundations, there's really an opportunity to create something special here. There's an opportunity to create thousands of jobs. Now, I know there's doubting Thomas, that can't be done, we aren't going to have any more money, RDA is going away, we can see the glass half empty, we can see the glass complete empty. But in the reality is we have done something that those in the beginning predicted we could not do. There was a lot of doubt as to whether Melinda Richter, who is the executive director of the biocenter, Mary Sydney, San José State research development, would they be able to pull that off, would they be able to actually get this started, would companies come in Edenvale in South San José at the very end of Silicon Valley a lot of doubt. There's no doubt, now they dit, they filled it and these companies are on a waiting list to come into that biocenter. So why don't they stay here? That is the thing that perplexes me about the report. It doesn't really address that. The report doesn't address the most fundamental question in the most important, I believe the most significant incubator we have, which is the biocenter, and that is, why aren't the companies staying and how do we keep them here? And that to me is a big flaw in the report. And as I stated in my report, we need to reach out to those companies that are willing to invest to create the kind of lab space for the next phase for these companies to go into. There's been several companies that wanted to stay here that could not do so because we do not have the space for them to grow into and so they have had to leave the area or go out of state. That's not the fault of our incubator. It is that we need to work together to create a vision to help these companies grow and stay here. So you know we have

an opportunity. In this next phase. And I focus on the biocenter but the other incubators probably have opportunities too. All of them have some potential in transition. We should maximize that and I'm not saying that the city should continue to put money in it. I'm saying we need to work with our private partners, create a public-private relationship that can move this stuff forward. Our residents are depending on it with a 10.5% unemployment rate that's got to be above 90,000 people unemployed. That doesn't count the underemployed, that doesn't count the people that have given up and stopped looking. I'm concerned every single day about those people. I'm concerned about people having jobs. And this biocenter by creating this new industry creates high-paying jobs. It's another flaw in the report when it talks about the only jobs in the incubators are people donating free time or getting equity for them. Biocenter jobs are from companies that are well funded. They have \$1.4 billion of investment in those companies. They are highly paid people, and that means if those companies stay here, they're going to create highly paying jobs, high paying jobs for our residents. So we have something. We have something we've created and I was involved in this before the memo came out and before any of this started. I've been involved in meeting companies and actually moving this vision forward. And in good time we hope we'll have positive results. Obviously we can't, you know, all of those discussions are not going to be played out in the public. It's a competitive environment and we're trying to be able to create something in a very competitive environment. Attached to my memo is a letter from Mary Sydney. And I hope everybody will take the time to read that. And her concerns about other economic development departments across -- you know in some other parts of the country actually looking at our companies to go after, because of what's perceived as some political issues here, I would hate to see that happen. I hope that we can find the will together to move forward to really support a vision to go forward with this. And I look forward to it coming to economic development and our committee members and our wonderful economic development and RDA staff working together with San José State, Evergreen valley college any other university that we can work with foundations to put the vision together to move forward.

>> Mayor Reed: Vice Mayor.

>> Councilmember Nguyen: Thank you. Thank you, Councilmember Herrera for the update from the report and for your memo. I'm not going to go into how important the incubator program is, or how not important or how

effective or not effective it is. I think Councilmember Liccardo did a really good job expressing that, as Councilmember Herrera. But what I want to talk about is just the process and how we got here. I just feel we can avoid all this and still achieve what we wanted to achieve in terms of producing an audit or asking the auditor to produce this audit as well as having the opportunity to look at see how we can look at the transition program for the incubator program if we only be a little bit more up front and talk with each other. There is a reason why we have different committees here. I chaired the Public Safety committee for four years, and every time one of the committee members wants to have an item that they want to discuss at the committee we talk about it. We talk with staff and we put it on the work plan and then we have it. And at the committee meeting we have an opportunity to discuss the item and if we feel that an audit, if it vouches for an audit then that's the process. So it's about respecting the process and respecting the chair of a particular committee. And I just feel that we can avoid all this if that's -- you know if we begin with that process. And in regards to this particular program, the mayor issued his memo and in his memo it lay out very explicitly how we can look at the incubator program and if you know if we did an audit then that's what's going to happen. And so I just feel that we're all colleagues. We should respect each other. If we want something to happen I think a little communication will go a long way rather than just hark this out the way it did. I really appreciate reading all the memos. I think this is probably the most memos we have read on one particular program, which is fine, it's great. But there are other ways that we can read memos and read staff reports and other program reports. I don't pretend to know what's happening in the neighborhood services committee. I don't pretend to know what's happening to the CED committee all the time. If I want to listen to those committee meetings I can and if I can ask for a certain particular report I can ask staff to give me that report and I will read it. It doesn't have to come to us all the time. It doesn't have to cater to our needs all the time, we're all adults. To say a certain report has been hidden or why staff wants doesn't want to share that information, I just think that we're doing a disservice to our staff by making those kind of really unforgiving claims. And so I read all the memos that's been circulated in regards to this particular program, and I think that Councilmember Herrera since she chaired the committee what she had laid out in her memo really explicitly lay out this necessary steps in how we can evaluate the program, look at the transition program, and if an audit is vouched, we should do that. But this is the right step to go and I think it pertains to everything that we have been doing in regards to the process and the policy that we make as a decision making body. And so I --

this is a memo that I can support. I'd like to hear from Councilmember Oliverio first. But I'd like to have an opportunity to make a motion after he's done. Thank you.

>> Councilmember Oliverio: Well, as been mentioned that incubators are all over whether they're in cities universities or private venture capitalists. And cities have done and do because residents frankly ask us to do so. So as the economy ebbs and flow, we often get the question in government, what are you going to do to create jobs? So naturally, wanting to try to please everyone, cities got in the game of being in the incubator space. And those investments were made with essentially a hope and a prayer. The conversation we're having today could take place in any city that has an incubator program. The fact is that there was a shared value by the entire city council past and present that this investment was worth it. I personally worked for a software company called agile software, that hatched out of the incubator started by then Susan hammer. The company stayed in San José and actually grew in our downtown to approximately 400 employees and a payroll of approximately half a billion dollars. Many of those employees lived in San José and spent their paychecks in San José. In this case the CEO was very loyal to San José, continued to stay in San José and actually contributed to philanthropy in San José. The children's discovery museum and a variety of arts groups. However, there was no ironclad guarantee of this. Why? Well, the fact is that no city incubator can control the success or failure of a startup company. No city incubator can control the relationship between the founder and the venture capitalist funders. No city incubator can control the relation between executive management of the company and their relationships with commercial real estate brokers. No city incubator can control the specific cost of real estate in neighboring cities or from building to building. City incubator can't control whether or not the company gets new management, and that new management lives up the peninsula and simply wants to move to another city closer to their employee base. We can't control mergers and acquisitions, or if their intellectual property is spun off and sold to someone else who carries on in another geography. Essentially we can't control free market decisions. Again, we did the incubators because of other cities did. What have been spent has been spent, just like the money we spent on affordable housing. Did we get all the jobs for all the affordable housing we built? What was the return on investment of spending \$835 million of RDA money on affordable housing? What are the ramifications to our city exempting affordable housing from paying millions in fees and taxes? I've asked for an audit of the housing department, but also realize the auditor has a backlog of audits that she's working on with her team. So we can do other audits

like; look at performance audits that have been asked for employees to look at specifically what management positions are doing, but essentially when you invest in intellectual property or people, there is essentially no guarantee that that won't move elsewhere. So instead though, if we had a requirement in hindsight that said you want to be in the incubator program, you must stay and if you go you must pay an exit for the cost of us hosting you. I guess we didn't do that. The do we judge that on how pleased we are as pedestrians or drivers that pass by the signage? So I'm frankly glad that the questions have been raised and it's good to bring those questions. So now, if there's a doubt or we want to make a change and we don't want to continue any leases that might be on the General Fund then the council can make that decision. But the Rules Committee sets the -- you know the workload for the auditor and essentially, my preference is, and I'd be supporting the mayor's memo but you know if we're going to have you know different audits come up you know the Vice Mayor spoke out it could come from the committee level or we have a day at the council where everyone submits what their audit should be and just like everything else we've asked whether it's ordinances we rank it and we decide what is the highest priority. Because you know crying over spilled milk about what's been spent on any given decision we've made in the past may be very good scholastically but it's not necessarily going to bring us any money in the future to go forward. So for me let's go forward with what the mayor put forward but it's absolutely no surprise to me. No surprise to me that any city incubator cannot maintain the companies that grow. Because there's too many external factors that do that. And so that's just the reality of it and we've come to the road where we don't have all the dough so this appears to be something we'll no longer be in the business for but there was a benefit for some companies, some individuals and various things in San José.

>> Mayor Reed: Anything else from the committee before we go to other council comments?

>> Councilmember Constant: Yeah, I just want to make some comments. There is been a lot said that I can't necessarily argue with. But --

>> Mayor Reed: But you'll see if you can find a way?

>> Councilmember Constant: No no, I'm not going to argue. I'm going to add other things. I'll leave the arguing to Sam. But I think what's important is there's a couple underlying issues here. One is the incubator program. One is the reports. I agree with what Madison said, is that we can't expect to see every single report. But if we want to see it, we should ask. I agree with that except for when reports have a significant finding or a significant relevance especially when it relates to budget. And I think that's what separates that. But it highlights something that we've talked about for the entire time that I've been here and I know it's frustrated me when I've been looking at a document that maybe is not important but I'd just like to review it and I can't find it. We don't even have a document management system in this city for me to find it. So I find myself picking up the phone and calling Dennis and saying hey can you find this for me or calling a department head knowing I'm wasting their time trying to find a report that I remember vaguely from three years ago and I don't even have the right name of the report so they're looking at something that might not necessarily exist by that name but it exists somewhere and I think that's something that we need to look at. And quite frankly, I see an audit being able to look at those type of things and find solutions to some of the performance issues that we're experiencing there. I think that it was interesting, a comment that Rose made about, we have this bio-incubator, but when the companies graduate, or whatever you want to call it, they move out, as they're fledging on their own, we don't have space for them in our city or we don't have the facilities in our city. Well, that's a very relevant observation. Because maybe that's not the incubator system we should have in place in San José. Maybe that's just not a fit for us. If we don't have the space, if we don't have the opportunities, that's something we should be considering when we're making the funding. You got to have if you're going to have a beginning you have to have a path to an end. Maybe it's we look at where, as a city, if we're going to invest resources, obviously not in the next couple of years but eventually we'll have resources to be investing. We should be looking at where does it make sense for us to incubate and invest for the businesses that are most likely to succeed, and locate, in San José. So that we're spending tax dollars in a responsible way, for a greater opportunity for return on investment. Knowing that all the things that Pierluigi pointed out are true. We can't guarantee anything. But you can guarantee if you don't have somewhere for them to land it's not going to be in our city. So I think those are all things where we can learn. And I think it's most important that we look at this as a learning opportunity. And I fully support the mayor's memo. I support Rose's memo but I also think that at some point we need to look at not only the program but the processes around the program. So that we can learn from them and be better going forward. Because when it all comes

down to it these dollars have an opportunity cost to them and we have to evaluate whether what we're spending is worth that opportunity cost. It doesn't matter if it's this program, it doesn't matter if it is an RDA, if we had a budget for the RDA, if it is in our General Fund or any other enterprise funds we have to be the best shepherd of that money as we can be.

>> Mayor Reed: Let's see if any other councilmembers wish to speak. Councilmember Pyle I assume you're here and you wish to speak.

>> Councilmember Pyle: Yes, thank you. First of all I would like to say, give great praise for Rose's memo and she put a great research into it and I learned a lot and hopefully, my colleagues did, as well. I did want to talk for a second about unintended consequences. And by that I mean the following: There were three Mercury News articles and one metro article regarding this situation. Here's the problem with that. The angels which Mary pointed out an venture capital people who see that get very skitterish. Are they going to invest in something where they think the city is politically naive and/or doesn't understand the nature of investments? In reference to keeping an even keel of the ship, that is a tremendous problem. And then we get -- that's where the misleading word came from, that's where hidden came from, it was in one of those reports. There was a supposition that there was something sneaky and underhanded about the thing when there was not, it was a report. Harry Mavrogenes had a heart attack I think it was late May of '09. The report had already been postponed for a couple of times, I believe it was then Richard perhaps you can help me with that it was soon after that that the report was dropped and we didn't revive it and bring it back. So it was given a low priority. That is unfortunate. I think the suggestion that was made that we should have availability of these reports is excellent. And basically, that should have been put online immediately, as should all reports, having to do with that. I think it's a great idea. And I have to ask the question, however. We're keeping Sharon waiting, we're keeping the people in the biocenter waiting to get some kind of a conclusion here. And I have to ask, what would be in the audit that wouldn't be already in the report? At least referred to. It may be a different opinion, different conclusions, but it's -- the information itself is going to be pretty well woven together. And by December, we don't know where redevelopment is going to be. So I agree wholeheartedly with the idea that we need to work very hard on the stay-and-grow concept. If we want people here, you are target perfect, Pierluigi Oliverio, because that's the problem. It isn't all the incubator people. They

had 4 out of 42 that won, in the incubator business that is great! I mean 10% that are able to graduate that is a good score. I know it may not seem that way, but it is, from the small amount of involvement that I've had with businesses. So we do need to take the 40,000 foot level approach, put all this together, as we go if we indeed are able to continue the incubator program. I think we could, we should really give it tremendous consideration. And talk about it here, not out in the paper. Thank you.

>> Mayor Reed: Okay, I'll just work my way down the line here. Councilmember Chu. I think I'll come back I think Councilmember Liccardo and Councilmember Herrera had something more to add. Councilmember Chu? Okay, Councilmember Kalra.

>> Councilmember Kalra: Thank you. You know first of all I don't think anyone feels that if there's a report that we shouldn't be able to have access for it or see it. I don't -- there's been some things written in the paper that somehow there's some people that don't want reports revealed. I don't think anyone up here is for that. We're all for transparency. I think that causes a concern whether it's intentional or not, hey these reports are done we are paying for them we should be able at least be informed that they exist. We can choose if we read them or not. I'm sure we get reports where we don't take the time to read them on issues that have to do with some items that we just don't have that personal concern for and other items we will, that's our prerogative to do our homework. When we're paying for reports there is an issue that we certainly can improve on the information-sharing and we make sure as Pete indicated some place we go a document database have information memos, that have e-mail that shows this information is available for you at this link. It is simple enough and we can make that happen. There is certainly frustration from Councilmember Liccardo which is understood that we're making decisions on issues on information that we should have known about in greater detail a couple of years ago. And some of the information I believe we are well aware of not necessarily from the report but the fact is that we are retaining the companies at the biocenter, that had been a topic of discussion given to us in the oral report and a topic of discussion in terms of what we're trying to do in Edenvale. In terms of the negative press and what have you, you know we can't control what the press is going to say about our programs and sometimes going to have negative impact on the ability of us to attract business. So I don't think we should ever be scared or fearful of the impact that reviewing reports or having open discussions is going to have on the ability for us to attract business. You know sometimes

that's going to happen and I think that -- I think that the fear of doing that ultimately costs you more in the long run. Because if you show a sense of not wanting to reveal things then it comes out later, it's like this is what else does the council not know about. However I do also agree with Vice Mayor Nguyen that there is an asset, there is a concern about communication. Councilmember Liccardo indicates he wants the auditor to look at the incubators to take the politics out of it or to make it independent. The reality is that, you know, I was getting calls on Thursday from reporters about a memo I knew nothing about, about a report I knew nothing about. So you know, I just think there are better ways to do this that shares equal concern that we all have about transparency. I mean I think that this is something a report that we should all have and I've had a chance to read the report now and it's a very interesting read. And I think that it does relate many of the concerns that all of us would have about incubators. But the concern is not with the incubators as much as it is with why we can't retain them here. And one of the major problems we've had that as we try grow this new industry, and I'm just using the (inaudible) because I have more information about it, because it's in the district and I know some of the challenges that have existed in trying to retain some of the companies. We haven't had the facilities. So for example, we just saw tandem move into the first floor. Well, that took a lot of effort to get Berg convinced that this would be a good investment to make. We have other shells that could be converted. Bioscience requires different types of infrastructure than software and other kinds of infrastructure. So there is a reason why it's taken six years to finally start to see the owners of the property, willing to make that kind of investment and that's the problem. I think if you look at the report one of the other things -- that's the other thing I appreciate Councilmember Herrera's memo, it highlights the positives not just the negatives. There's both and I think we need to look at both and this report can help us as Councilmember Liccardo has indicated it can help us going forward to make sure we make the right investment, to make sure we make the right investments. One of the things it says in the record all the incubators meet the test of maximizing the success of emerging companies. That's what incubators do. They incubate. Especially start-up companies. And the incubators have been successful in doing that. I know the biocenter has and that's why they've been at full capacity. The problem is when these companies graduate we can't keep them. That's a problem that the city and the Redevelopment Agency and the private property owners that surround the incubators that are in San José, that is something we have to work with them with, to make sure that they are ready to accept these companies as they grow out of it. And it says it right here, clearly, the weakness is because the incubators are located in the heart of Silicon Valley, they are serving the region as many

of the graduate businesses have located outside of redevelopment project areas and outside the City of San José. That is a problem, that is something we need to talk about and need to continue to talk about, not just for incubators, but for any small business, any startup we're trying to help, you know, get up and started. So you know I think that I'm -- the mayor already set forth in the spring his desire to have a transition plan for the incubators. We're already not going to have any funding for the biocenter in June and I think Sam has indicated I think -- we've seen through 2014 for the downtown. So we do have financial investments that are going forward, but you know I also have concern about the workload of the auditors because as you can see this past year the auditor has done the disability retirement which is something that has to do with long term sustainability. The firefighter staffing, long term sustainability and that's why that's the reason why I expressed concern about doing an audit on incubators with our short-term investment. I do think we have lessons that we can absolutely learn as far as going forward how we use our money to encourage the growth of business of the City of San José. I think it is going to be really valuable for everyone to read the report and I appreciate Councilmember Liccardo saying right off the bat saying that he'd be fine with the deferral to allow people to have the chance to do that. I think it will be very helpful that everyone read the report. Because there are lessons in this report about what we can do to better retain companies here in San José, whether they're from the biocenter or the incubators or not, just in general. But I definitely think that there are lessons that we can continue to learn. I'm comfortable with the road map that the mayor and Councilmember Herrera are putting forward because it could very well lead to having to do an audit. I just don't know what the audit would be for right now. I think that we need to kind of highlight what the best -- what the major problem is that needs to be audited, and in this case it could very well be as Pete indicated, just off the report, it could be how we invest money to encourage growth of business whether it be incubator or not. And I think that's something that through CED we can come to some agreement on what the best use of our auditor's resources are. But in the meantime we have a 70 thousand plus dollar report that, you know, although it's two years old, I think some of the principles are still valuable and can be valuable in trying to determine -- try to determine what we do in terms of a work plan for both a transition of incubators to assist all the incubators in trying to get financing for them so that they can continue to do what they do but more importantly from my perspective how we can work with the incubators as well as work with the university and other entities to ensure that as these incubators graduate companies that we keep them here. And I think the whole process should involve as much transparency as possible and the fact that we get information that's available as soon as

it's ready for us, ready to be viewed and so that's something that I think I can't imagine anyone would be opposed to.

>> Mayor Reed: Councilmember Campos. Comments?

>> Councilmember Campos: I thought I had to come -- [Laughter]

>> Councilmember Campos: No comment.

>> Mayor Reed: I'm sure you are glad you did. Councilmember Liccardo and then Councilmember Herrera. I think.

>> Councilmember Liccardo: I'll take the balance of Councilmember Campos time. I think -- I just want to address a few concerns. One is, I think there's been some concerns raised in Councilmember Herrera's memo and her statements about the quality of this report. I don't really have a dog in that hunt. I don't know these consultants. I never met them, I never talked to them before. I first saw this report in the last three to four weeks. But if there are concerns about that I think what we also ought to do is consider other reports. Pete made mention we don't know what else is out there. Actually, there is another report out there. Jim Robbins did a report on incubators, I don't know exactly when, but if you haven't seen it, you're not alone. It also didn't make its way to council. I would ask that Jim Robbins report be included in whatever report CED committee sees. My understanding, that report is also not terribly flattering of the performance of the incubators. So that way we can have a full assessment from two different consultant groups as to exactly what's going on there. You know I appreciate the concerns that Vice Mayor Nguyen has about the process. And the process somehow or another needing to be followed in terms of how we go to an auditor. I do want you to know I did respect very much Councilmember Herrera's position on CED. I went with her actually with a draft of my memo and copies of the report days before I actually released it. I do believe however here, process broke down. And it didn't just break down here in this instance. But I'll tell you very quickly how process broke down in this instance because I think Councilmember Pyle made some -- raised some concerns about aspersions about how this did or did not get to

the council. The draft of this memo actually reached RDA staff in the spring of 2009. It was set originally for hearing in May of '09 and you can see this on the committee reports, staff had it a couple of months before that in draft form before it became final. In May '09 and in the June '09 reports on the transcript it was continued under orders of the day as typically reports are often continued, certainly. I don't think Councilmember Pyle knew anything about what was in the report. I know certainly I didn't, nor did any other member of CED committee. And in fact it was deferred and continued for several months thereafter. Ultimately dropped, and we were told that it would be raised again in December '09. And sure enough, it finally showed up on the agenda in December '09 and there we represented with a glowing report of the incubator's performance. The results of this report were never mentioned in that CED committee hearing. We had a lengthy discussion of the incubators' performance, and none of those findings ever came to light. I find that disturbing. I find it disturbing that we never got a copy of Jim Robbins report, I find it disturbing that we never got a copy of this report. I don't think it's coincidence. I think it's problematic. I think there is a larger problem here, and this is where I'm going, Vice Mayor Nguyen. I believe process broke down many times in this city. When it came to issues involving the Redevelopment Agency and Team San José and many other issues where we would hear incongruity to put it nicely, information from outside City Hall which was plainly inconsistent with the very positive self-serving affirming information we received inside City Hall. Whether a concern, for instance Team San José under its prior management and its glowing performance and everybody of course would rally to the defense of Team San José when we would hear from other sources from former employees or from people who were customers of Team San José that things are really severely broken over there. And people are being paid bonuses when they are losing millions of dollars. And we've got contracts with Niederlander there putting Team San José and ultimately the city on the hook for hundreds of thousands of dollars of losses that nobody would ever engage in contracts like that. And yet, we were being told everything was fine. For three consecutive years we're told by the head, then the head of the Redevelopment Agency, that tax increment would grow at a very good clip and for three consecutive years I publicly said, Harry, you're overestimating those results, it's inconsistent with everything I'm hearing from the real estate industry from everybody outside City Hall. For three consecutive years redevelopment overestimated those results. Why is it consistently on issues like this, we are getting the wrong information? And we're not getting reports? Why is it we spent \$20 million in design and architectural renderings on a building that will never ever be constructed? I'm referring to the expansion of a \$350 million convention center plan. When no one had a very

clear idea exactly how we were going to finance \$350 million worth of expansion. And by the way there had been a lot of reports out there from very prominent economists from the University of Texas who are telling us there is no growth in the convention center industry nationally and there's no reason for cities to continue to engage in this ongoing large scale expansion. Now we're in a much more modest mode and we're focusing on how we can rebuild the convention center and fix what needs to be fixed and that's very reasonable. But why is it that we consistently see this external information at odds with what we're hearing inside city hall? I believe the process doesn't work. I think we need to be asking those kinds of questions particularly as we consider sensitive issues around economic development. How can information get to decision makers that needs to get to us at the same time that we recognize there's sensitivity about businesses that may be scared away if it doesn't look good? I think the process hasn't worked and we need to fix it and that's why I want there to go to the City Auditor.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: It -- I appreciate Councilmember Liccardo bringing this report. But I think as I'm listening to him speak that his passion is behind a bigger issue and that's redevelopment and lots of issues. Team San José, the convention center, we've heard a lot of projects listed. So I think it's much bigger than the incubator program that we're talking about today in terms of his scope. And as I've said, I think it's very important that we get the report. But I guess my concern, and since we're talking about -- we're getting into a little more detail, my concern with Councilmember Liccardo's memo is that it doesn't highlight the positive side of the report. It highlights -- it picks out the things that are most negative. I think if we need to look at a report we need to look at all of it. We need to see everything it's saying. I'm just a bit concerned that some of the things that are said in here are only reflecting a portion of it. And I go back to, it doesn't take -- you don't have to have -- know the authors to look at this report and find some flawed methodology. And I'll leave other people to describe that. But for example, individuals are quoted in the report and we have no idea how they got -- gathered those individuals, whether they are just one-off comments and then they are used to support some very critical notions about the incubator performance. There are things ascribed in Councilmember Liccardo's memo about, I believe he talks about the business licenses that are not -- that, in the report, is alleged to be all the incubators, when in reality the biocenter and the environmental business cluster, have business lines and were instrumental in making sure that all the

other incubators got business licenses. There's on and on. I'm not going to sit here and go through the entire report. But I think as we look at this report we need to look at it in its totality. We need to look at the positive things it says as well as the negative things. We need to take the lessons learned from it and apply it to our current and future programs. I also say in terms of the money spent, the money's been spent. We are in a couple of leases that we still have and the only way I would actually recruit some dollars out of this is really renegotiating the longer lease. I don't know how we can change the lease at that time biocenter, in terms of practical looking how we can save money. I think what we can do, though, is leverage what we have. And those of you who are not familiar with the biocenter, you should learn about all the incubators, but the biocenter in particular. Pete, you mentioned that maybe we shouldn't be in that business. The point is or maybe we shouldn't have picked the biocenter to start with. We have a biocenter that now -- we now have a foothold in life sciences. That's a fact. That's equity. We have those companies there now. We can work with San José State university, private companies, foundations, colleges, there's a chance to leverage something here to create something really important. And I'm not just speaking from -- you know I'm not just speaking from a dream. I'm actually talking to companies and there's interest. So I think like I said I go back to the beginning. We never believed that that biocenter could ever happen. And it would never happen down in Edenvale. Well, it is there. No one ever believed those companies would locate there. Well, they're there. And now, there's doubt as to whether we can leverage that. I'm telling you we can. And one of the things we need in economic development is a positive attitude and a vision. We're not going to get there if we don't have that. Pierluigi knows. He's worked at startups. Startups start out oftentimes with an idea on a napkin. And yes, a lot of them do fail. But the ones that succeed, if Kaladis had been Apple Computer today, would we be talking about this? If Kaladis had been Google, Kaladis is the company they cite in the incubator report as one of the companies that stayed here and created a lot of the businesses. Or if agile software had been a Google or a Yahoo. So, yes, they don't all succeed but the ones that do sometimes succeed big. And I want to support what Pierluigi also said, and I say it in the report, that we can't -- we -- the companies we should expect a lot of those companies would fail. You know maybe we should have never got into it. I wasn't here 17 years ago. What I'm looking at now what can we do with what we have? What can we do with the assets we have, and how can we leverage those? We need to figure out a transition plan. We need to, yes, take lessons learned, but we can't just have all our focus backward, looking back, we've got to look forward too, that's what I'm suggesting.

>> Mayor Reed: Okay. This is not the CED committee. And you know we don't need to make those decisions and consider the report. That's really on the agenda for the CED committee. So really, the question is, you know what do we do with this referral to the staff. And I think we should try to focus on that, everybody can read the report and form their own opinions and do whatever they think needs to be done at the CED committee meeting and we'll get back to it. Councilmember Constant.

>> Councilmember Constant: Well, that's exactly what I was going to say. We're having two completely different conversations here. One is about a report and one is about processes and how we get to where we are. And even the statement I made was not that we shouldn't have an incubator. It was, we should be asking these questions.

>> Councilmember Herrera: I agree.

>> Councilmember Constant: And that I think is the spirit of Sam's memo. Is we need to be asking these questions. So we -- if you don't ask the questions you can't find the lessons learned and that's what it's about. So I was hoping we weren't going to get into all the details of the report but we're well past that now.

>> Mayor Reed: That you can resist.

>> Councilmember Constant: I am going to resist and that is I think we really should -- I know the Vice Mayor wants to make a motion on the memos and I think that's where we need to be so that we can get some direction here and I hope that direction is to follow the spirit of all three of the memos. I don't think we should discount the audit, but I also don't think we should derail conversations at CED. That things can happen, we need to get to the bottom of it. On both. Not only the issue itself but the processes. So with that --

>> Mayor Reed: Vice Mayor.

>> Councilmember Nguyen: Okay so here we go. I'm going to make a motion to move the mayor's memo dated August 22nd, 2011 and with that memo, I'm going to include item 2, 4 and 5 from Councilmember Herrera's memo and also with the goal that we will have an audit of the incubator program which is in Councilmember Liccardo's memo but I'd like to see this goes to the CED committee first and council has a chance to look at the transition plan before we actually conduct the audit.

>> Councilmember Constant: I'll second that.

>> Mayor Reed: Okay, so we have a motion on the floor. I have a question about the motion. Item number 5, Councilmember Herrera's memo, is to implement a policy that all consultant reports evaluating program performance be circulated to the council. So I'm assuming that's a referral to the staff because we don't know what the policy is and they've got to do their work and that sort of stuff.

>> Councilmember Nguyen: That is correct.

>> Mayor Reed: Although the manager can have a policy in the spirit of what we're talking about. I think she gets the message, I think Richard gets the message. Until we get a formal policy, I think we'll be fine. On the motion, I do have a couple of people that want to speak on this from the public. We'll get to that eventually. Councilmember Oliverio.

>> Councilmember Oliverio: Yes. So in the ending, Vice Mayor, with the goal of having an audit my preference would be going having consideration of the audit because I don't know what other audits that we might need to have a priority and I would want to weigh this as a priority against any other audit.

>> Councilmember Nguyen: Yes I think that makes sense.

>> Councilmember Oliverio: Thank you.

>> Mayor Reed: Let me take some public testimony on this topic. I have two people who want to speak, Mary Sydney and David Wall.

>> Thank you, Mayor Reed and councilmembers.

>> Mayor Reed: Tilt that up or squeeze the handle and get it up a little bit higher so you don't have to bend down.

>> Thank you. I was just saying thank you to all of you and I very much appreciated the discussion that's taken place here today and essentially the questions and issues that I had that I wanted to be sure were made aware, put before the council have all been addressed so I really don't have any further comments or questions. So thank you very much for your time.

>> Mayor Reed: Thank you. David Wall.

>> David Wall: Heard a lot of excuse-making today. Lot of it. All of it avoidable. If councilmembers would simply do their jobs. With reference to people that have been on the CED committee since 2007, and the 11th, 12th hour, come up with a memo. There is sinister implications here. It raises an issue of political grandstanding. There's consequences rather with the exceptionally poor decision making with the managements of the San José Mercury News and their lack luster journalistic reporting of really not only the facts. There are certain fact that have to be out there, the fact that nobody on these committees pay any attention to these incubator programs, their cost until at some point in time where a memo surfaces, the memo was poorly planned. It should have went through a process to the different committee members that actively served as the knife to stab them in the back as well as you Mr. Mayor. This could not happen. Now, when it comes to lack of credibility on these council committees, the issues are almost legion. But not holding anybody at the Office of Economic Development accountable because these memos and these agendas here, this is what the auditor would show you what the Mercury News would show you. Mr. Liccardo was actually correct. This thing went before this committee so many times it was deferred and dropped. That in itself is unacceptable. And so for all the

gratuitous speaking between the different councilmembers, no. There has to be some form of accountability here. And Mr. Mayor you're right about pursuing it in this venue. Because there are other audits that has to be done in this city that show a lot of other serious problems. But the bigger issue of political grandstanding and the mismanagement of the San José Mercury News to only print a part of this is not acceptable. Thank you.

>> Mayor Reed: Thank you. Hi a couple of comments to close with. Since I was here in 2004, when the biocenter incubator was launched, I wasn't here in 1994, when the others were launched. I think when it was under Mayor Hammer. And I've learned a few things about incubators during this time. And I think that I'd sum up by saying it is a lot easier to hatch eggs than it is to use a chicken. Using the incubator metaphor and carrying it on to the next level. [Laughter]

>> Mayor Reed: And what we discovered particularly in the biocenter it is wildly successful for companies who want to come into the biocenter and the companies are very happy, very complimentary, I've been out met with the CEOs and that is one of the things I did early in 2007 was to tour the incubators. And what I heard from the CEOs is this incubator is great. But there's no place for us to go, when we reach a certain point in our development. And we have to cross what they called the valley of death. Because in bioscience it's different than a software company or some other kinds of companies because you are in the incubator, you develop this you got a great idea you develop a project you prove that it works but it's bioscience so you can't just start manufacturing it. You've got to go through this testing phase and you have to produce enough of it in order to do the right size of test and it's very expensive to get into production bass you're not doing it on scale. They set me off to help them figure out a way to help them cross the valley of death. It looked like we might get a grant from the economic development administration to help do that. At one point the Redevelopment Agency had a budgeted line item of about \$7 million to help build out some extra space. But you know, things changed in terms of the financing that was available. We didn't get a grant from the EDA and I talked to CEOs that have left the incubator and went to other cities. As recently as a couple of weeks ago. That CEO has got a successful company, a successful product, they're in large scale testing and they're going to save the lives of maybe 60,000 kids so it's a great product. But when it got to that success point and needed to move he went to Mountain View, I think it's Mountain View. Why? Because he found a building with 7,000 square feet of wet lab space ready to go that somebody had

vacated, and he took that space. But he told me that he was very appreciative of what San José had done. He wanted very much to come back to San José and when we got that manufacturing facility some day, he hoped to do it in San José. So we had a very successful hatching the egg. But the chickens you know went off down the road. And they might be doing very well. I mean that's just one of the things that I heard about incubators. It all depends on a lot of factors beyond your control and it also helps to have money. And these days we don't have money. And that's why I've recommended we need to transition, we need to do a transition plan within the time frame of very short time frame, whether you like the incubators, don't like the incubators, think they're successful, don't think they're successful, we don't have the money to continue the line. And you know, I heard a lot of good arguments in favor and a lot of good arguments against. I was here in 2004 so I take full responsibility for helping to launch it. I think you can -- there are many arguments you can make for the success and some to the contrary. But I think we need to look forward, figure out what we're going to do and I think the council has already set that path but there are lessons to be learned and I agree with Councilmember Liccardo's process issues and concerns about information coming to the council. And I think those are points well taken. I think Councilmember Herrera wrote a good memo because I was reading it today. And much of this history that she relates I now remember. Having read it again. I didn't quite remember it all even though I went through some of it. But I've never seen the report. And I don't -- I'm not ready to talk about an audit unless I've at least had a chance to read the report. And that's why I recommended we give the CED committee a chance to do their work, and that will give me a chance to read it and everybody else to read the report and then we'll talk about what level of audit and what direction of audit and things to be considered and that's why I've recommended that we defer that audit decision to the September 28th meeting, I believe that will be after the CED committee has their meeting in September. So that's the reasons for my recommendation and we have a motion.

>> Councilmember Liccardo: Mayor.

>> Mayor Reed: Councilmember?

>> Councilmember Liccardo: Would the Robbins report also be include the OED evaluation?

>> Mayor Reed: I think that's intended. I haven't read that one either.

>> Councilmember Liccardo: Nor have I.

>> Mayor Reed: On the motion, all in favor, opposed, that motion is approved. Completes our work for today on this item. We have accumulate Morton agenda. As soon as I get back to that place, so all those the next item is a memorandum from councilmembers Pyle and Herrera. On asking the City Manager to do an info memo on assessment of retention efforts of senior staff, to be presented, the info memo by September 14th. On that, Councilmember Nguyen. Vice Mayor.

>> Councilmember Nguyen: Thank you, I just wanted to ask the City Manager a question about the time line, I'm not sure if you can prepare this by September 14th. If you need an extended deadline.

>> City Manager Figone: Yes, actually Councilmember Pyle gave me a courtesy heads-up on this issue. I think we can hit it, Vice Mayor. I guess what I would ask is for a little bit of leeway. We would certainly let the council know if it needs to be delayed. The data-gathering piece of this isn't too onerous, but you never know once you jump into it. Given it's a limited number of people I think we should be okay but if I can have that flexibility I'd appreciate nap.

>> Councilmember Nguyen: Maybe we should have the info memo probably by the end of September. That would give you some leeway, that would be sufficient.

>> City Manager Figone: That's fine, thank you.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: City Manager so today if you have any given department head or top tier management that says I'm thinking of leaving and for a number of reasons do you have any flexibility that if any of that reason happens to be compensation wise, do you have room under your authority to do anything?

>> City Manager Figone: Yes, I do. If they're not at the top of the range and it really is about money and if we looked at internal equity and fairness issues, I certainly could do that. I'm very mindful of the environment we're in and so would use that discretion very selectively.

>> Councilmember Oliverio: But on the other hand if it's someone who's leaving because it's a unique opportunity that's intrinsically different than their current position, and we don't have that position here, or it's a commute issue or something but again you do have flexibility --

>> City Manager Figone: I do.

>> Councilmember Oliverio: For the ones you feel are most valuable?

>> City Manager Figone: I do, thank you.

>> Mayor Reed: Anything else on this, you just refer this to staff? Okay.

>> Motion to approve.

>> Mayor Reed: Got a motion to approve.

>> Councilmember Nguyen: .

>> Councilmember Nguyen: Make a motion to refer to it City Manager.

>> Mayor Reed: Motion to refer it to City Manager. All in favor, opposed, none opposed, that's approved. We have a card? Mr. Wall you want to speak on this before we finish.

>> David Wall: I think you're losing a large number of your people because of your sick leave buyout policy Mr. Mayor and I think you should really stop it. In other words, pay them what they've accrued and earned. They've earned it. Council has failed to address hiring new people who are coming in. At least in the environmental services department. With the same benefit structure as what you've argued against. But this sick leave buyout policy, a person can retire and I've known several people who didn't want to retire. But they only retired because they're going to lose that benefit that's been conferred on them through contractual arrangement and through your imposition tactics are taking it away. And that applies to our honorable City Manager. She's earned every penny of it with the exception which you reinstated. But no you're losing too many qualified people Mr. Mayor because you didn't think this one out too clearly and also anybody that's still on probation that's been hired you should consider excusing them from service while you can. And I mean immediately. Thank you.

>> Mayor Reed: That concludes the public testimony on the motion, all in favor, opposed, none opposed, motion carries. Last item of business is a request from District 4 safety resource fair as a city sponsored event. We have a motion to approve, all in favor? Opposed, none opposed, that's approved. Open forum. Mr. Wall.

>> David Wall: Now, since this catalyst program is another one of those programs you need to have some form of questioning on, how much money was allocated, how much was used, how much is left. You could go through the entire gamut of the CED work plan, and start questioning everything that's there. From the Office of Economic Development. These people come in, with all sorts of hair brained ideas and it just flies through councilmembers as if it's the greatest thing since sliced bread. That has to stop. This revolving door policy, Mr. Mayor, you're going to start seeing lots of these waivers coming in. Why? Because these high end managers that are quitting can weigh one of two things. Cash out my sick leave and leave and come back as a high paid consultant, leave and come back because the department doesn't have any transition or transitional plans so there's nobody there. This is going to happen and this must stop. Must not allow any of these waivers to come in. And this is because corruption will flow through these waivers left and right. And so therefore, don't do it. Don't allow it. This

business, this ongoing business with the environmental services department with reference to the water pollution control plant should cause you some concern. Almost to the point where you might lose sleep about it. We'll talk about this at a later time period. Thank you.

>> Mayor Reed: That concludes our meeting.