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>> Mayor Reed: Good afternoon. Like to call the meeting to order. This is rules and Open Government Committee meeting for November 2nd. Need to make any changes to the agenda order? I think we had a request from Councilmember Chu to defer item H-2, the Santa Clara County Suicide Prevention Strategic Plan, for a week, so we will do that. If anybody wants to speak on that we'll take it up next week. Anything else? All right. First item to consider would be the November 8th council meeting agenda. Anything on page 1? Page 2 or 3?

>> Mayor on page 2 it says 1.4, the second harvest food bank but that should actually be removed.

>> Mayor Reed: Okay. So we have three ceremonial items. Although we may be adding some before we get to the end of the agenda here. Anything else on page 2 or 3? Page 4 or 5? Have a couple of notes, item 3.3, the RFP on proposal for citywide janitorial services should be deferred to November 29th. Is that correct? And civil service commission interviews to be deferred until the 15th agenda.

>> Dennis Hawkins: Please.

>> Mayor Reed: And one other note, the revolving door ordinance, 3.5, probably requires a two-thirds vote.

>> Dennis Hawkins: Yes, Mr. Mayor, the revised agenda will have that noted.

>> Mayor Reed: That's because it's a modification of the ethics provisions per the charter. Needs two-thirds vote, right?

>> Dennis Hawkins: That's correct Mr. Mayor.

>> Mayor Reed: Anything else on 4 or 5? Page 6 or 7? Page 8 or 9? That's the actions related to the option for property to Athletics Investment Group LLC. I'd like to take that -- the joint -- let's see, this is the joint meeting of the Diridon Development Authority and the city council. I'd like to take that first on the agenda before we get into

the city agenda. So that's going to be somewhere probably before 2:00, given that there's only three ceremonials. I have some requests for additions, to add some committee reports, Rules and Open Government, Public Safety, Rules and Open Government, three of those to add. There's some changes we need to make on item 2.8 regarding agenda language, I'm not sure exactly what it is. It is a memorandum of understanding for the UASI security agreement, we're going to execute a two year agreement, not a three year agreement, is that the difference? That's just an agenda correction. And then an addition of item C, for -- item 2.11 which is the downtown parking incentive program. I guess that's a change in the language on item C, from what's already published. I'm not sure what the change is, but just a modification of the agenda language, right?

>> Dennis Hawkins: That's correct.

>> Mayor Reed: And then we have the referral or request, I'm not sure if it's a referral from yesterday's meeting or just a request to add to the meeting agenda, the urgency and regular ordinance amending zoning code regulations pertaining to medical marijuana collectives.

>> City Attorney Doyle: That's correct. Mr. Mayor, we're requesting a sunshine waiver on that. We've posted the memo in the urgency ordinance as of Monday. The regular ordinance will be posted this week. It's essentially the same as the urgency, without the declaration of urgency.

>> Mayor Reed: Okay, then a request to add commendation to SJB Child Development Centers from Councilmember Liccardo. That gives us four ceremonials. Any other changes or additions to consider? All right, we need a motion to including the sunshine waiver.

>> Councilmember Herrera: Motion to include the sunshine waiver and adds.

>> Mayor Reed: Motion is to approve with the adds and the sunshine waiver. You all in favor? Opposed? None opposed, that's approved. November 15th, draft agenda. Anything on page 1? Page 2 or 3 we have a lot of ceremonials. I think we ought to -- the one for the San José family camp that's really not the appropriate time to

be doing a ceremonial for that since we have a business item on the agenda dealing with family camp and I don't think we ought to be mixing those so we should hear that some other time. It would give us five. Split between the evening and the afternoon. Anything else on page 2 or 3? Page 4 or 5? Page 6 or 7?

>> Dennis Hawkins: Mr. Mayor, we'd like to note that the addition of the civil service interviews and request that that be heard last on the 15th.

>> Mayor Reed: All right, let's come back and look at the rest of the agenda and find out how late the last will be. I think there are five to be interviewed so we need hour, hour and a half, somewhere in that range. Had a note for item 6.1 that we ought to have a time certain for the issuance of airport revenue bonds. So we need to come back to that and figure out when we can do that. Anything else on page 6 or 7? Page 8 or 9?

>> Councilmember Oliverio: Mr. Mayor.

>> Mayor Reed: Yes.

>> Councilmember Oliverio: May I make the suggestion on the airport revenue bonds be done immediately after the ceremonials and time certain for the 15 might per hour, recommend that be last in the evening and manage the civil service interviews before. But that's the will of the committee, but trying to manage parents schedules is difficult.

>> Mayor Reed: You're saying in the evening? Approximately not in the evening but last in the afternoon.

>> Mayor Reed: After the civil service?

>> Councilmember Oliverio: Correct.

>> Mayor Reed: Okay. Anything on page 8 or 9? Page 10 or 11, land use items, only have one item. And we have an addition of a commendation of second harvest food bank and then I had one thing to talk about, adding to the agenda, I'm not sure about how we go about doing it. Let me just ask the question, and that is the forecast, updated forecast of the five-year forecast I think is coming out, between now and that meeting. And ordinarily it just gets released and there's no briefing of the council. And I'd like to think about having that briefing done in the evening as something I don't know if I need to do a memo to rules or we just ask the manager to bring that back next week so we can talk about putting it on the agenda. Then it wouldn't be any action or anything but we need to put it on the agenda somehow.

>> City Attorney Doyle: You could do it that way, bring it back as an add next week.

>> City Manager Figone: Yes, mayor, we'll have the appropriate title and we'll bring that forward at Rules but that's a good alert for staff so we start lining ourselves up.

>> Mayor Reed: We could do that as part of the City Manager's report, but it at least deserves its own agenda line, it's kind of an important thing, and I'd like to do that first thing in the evening if it works out for the staff. Any other changes? The only addition was the second harvest food bank that I've got so far. All right, back to the timing of things. Trying to peg a time for our civil service interviews. Essentially last on the agenda. After a lot of other things.

>> City Attorney Doyle: Mr. Mayor.

>> Mayor Reed: Yes.

>> Councilmember Oliverio: So just recapping if we did the airport revenue bonds immediately after ceremonials that gives you your time-certain on that one so the finance team can be there.

>> Mayor Reed: Right.

>> Councilmember Oliverio: And then if you did say not before 3:00 for the civil service interviews and then just took the 15 mile per hour after that.

>> Mayor Reed: What else do we have of major substance? I think you're probably right about the 3:00. Anybody else think 3:00 is a not before time better for the civil service commission? I don't see other things that are going to take a lot of time for discussion. There will be something to talk about I'm sure but I don't see any big ones on there now. Not before 3:00 for the civil service commission?

>> Dennis Hawkins: That sounds good.

>> Mayor Reed: Do the 15 mile-an-hour school zone last after that.

>> Councilmember Oliverio: Yep.

>> City Manager Figone: I think that should work. What I was worried about is if that gives you too much down time. But I think the airport bonds presentation is going to probably take some time. I just wanted to make sure we get you to 3:00 without a gap.

>> Dennis Hawkins: There's also the LED street light item.

>> City Manager Figone: Okay.

>> Councilmember Oliverio: And then just to clarify City Clerk, if we get to 2:45, 2:50 we could either take a break or if one of the civil servant applicants is there we could then interview them first, right?

>> Dennis Hawkins: We normally ask them to be there 15 to 20 minutes prior to that so we can get them organized. So minimize their down-time. But we should be ready.

>> Mayor Reed: But if we say not before 3:00 --

>> City Attorney Doyle: It's the public. You're telling the public you're not going to do the interviews until 3:00. It's really not the individual applicant's concern, it's the public's concern.

>> Councilmember Oliverio: Thanks for that clarification, City Attorney. I always tend to think about it as more of the agenda item. But yeah.

>> Mayor Reed: The smart LED street light system, actions I don't see that as generating a lot of discussion. So maybe we should say not before 2:30. We're always optimistic that we are going to get through these things early and sometimes we're close on the time estimate.

>> City Manager Figone: Then mayor if you're not and you have to go into the interviews and there's still staff waiting as we discussed before, staff can go off, and we don't have to tie them up in the audience.

>> Mayor Reed: We can take them up in the middle of the meeting. We pretty much did that, I think, with the last round of interviews we had some things afterwards. Okay. Anything else on this agenda? We got everything timed out. Okay, I don't see anything else we need to deal with. Anything else? Is there a motion?

>> Councilmember Nguyen: Move with the addition.

>> Councilmember Herrera: Second.

>> Mayor Reed: Motion is to approve with the amendments, additions, and times set. We didn't have any sunshine waivers on this, right? Although we might have a sunshine waiver on the forecast. Depends on when it comes out I suppose but we can deal with that next week, okay. On the motion, all in favor? Opposed? None opposed, that's approved. Agency agendas.

>> No items, Mr. Mayor.

>> Mayor Reed: No items on Redevelopment Agency agenda. I have a study session agenda to consider, that's the joint council/Water District board study session. I have a request, I'd like to have a presentation and discussion on trails, or joint trails effort. Somewhere in there, maybe not the full blown presentation of everything we're doing, but at least a status report on the projects that we're working on and other things. It kind of depends on the time, but I know councilmembers are always interested in trails, and we have this joint effort, and they have money, and sometimes it helps us.

>> Ed Shikada: We talked to Water District staff and be happy to accommodate that. We could add it at the end of the agenda, among discussion items, simply a trail update and we'll put together a presentation on it.

>> Mayor Reed: Okay. Our staff is ready like at any time to make a presentation. Because I've heard them do that on pretty short notice. It should be okay. Any other comments or changes on this?

>> Councilmember Nguyen: Move for approval.

>> Councilmember Herrera: Second.

>> Mayor Reed: Motion and second. I have a request to speak, David Wall.

>> David Wall: Good afternoon, Your Honors. Briefly, I would hopefully, that you would have a thorough discussion on the status of the advanced water treatment facility. In its construction phases. Put also, a discussion concerning toxicity issue, as it will apply to the brine being discharged into the final effluent, and whether or not the plant's final effluent can take that extra loading of toxic brine. I think this is very material to the discussion. And it would also be interesting, whether or not that facility will be a permitted discharger, since it will be discharging a hazardous level to the plant. I think it should have its own permit for discharge. Thank you.

>> Mayor Reed: That concludes the public comment. Any other questions or comments on that agenda? We have a motion to approve. All in favor, opposed, none opposed, that's approved. Legislative update. Is our next item. Betsy Shotwell.

>> Betsy Shotwell: Mayor, members of the committee, Betsy Shotwell, Director of Intergovernmental Relations. I just want to update the committee following our discussions last week on the realignment with the county and funding and all of that. The association represents the county CSAC and the state sheriffs association and the probation officers have filed an initiative now that would carve out 1.06 cents for paying for the realignment out of the state sales tax. This is not including payment or assistance to cities. So things are still in play still in discussion, I just got off the phone with our lobbyist in Sacramento, Roxann Miller. I did read that the leaders of these county groups did indicate that they're still willing to join a broader team of school officials business leaders who are working with Gerry Brown to ask voters for a tax hike next November. So this is all in play as I speak, but continue to keep you all informed as to where things are.

>> Mayor Reed: Who's running the discussion on behalf of the cities, is that the league of cities effort?

>> Betsy Shotwell: I would imagine city representatives. I didn't have a chance to talk with the police chief, but the Cal chiefs I'm sure is very much involved in this as well.

>> Mayor Reed: Questions?

>> Councilmember Oliverio: Clarification, Betsy. Did you say it was a 1% tax increase, or carving out from the existing --

>> Betsy Shotwell: No, it's a carve-out, right, exactly. That's with what's causing some of this concern, while the governor has been talking with regards to raising taxes, this is a carve-out of the existing state sales tax.

>> Councilmember Oliverio: And is it 1% of the existing state take, or is it 1% of the -- is it 3 or 4%, so they add the three or four cents out of every sales tax dollar?

>> Betsy Shotwell: I haven't read the initiative. I'm just getting up to speed on all this. May not even be on the web yet. But we'll get more clarification as these all play out for you.

>> Councilmember Oliverio: Thank you.

>> Mayor Reed: And anybody else on this? Okay, thank you, that's the update. Nothing on the federal government side. Our next item is public record. Any matters the committee would like to pull for discussion? Mr. Wall, you want to speak?

>> David Wall: Item C is a thank you for two Department of Transportation employees, Joseph Florez and Jason Hernandez, provided excellent service to the city and to my neighborhood. Item D, the clean tech demonstration center, should cause you some concern because of the impending collapse of Greece's financial structure and the impending collapse throughout the world. But even more so, one of the investors, an investment group filed for bankruptcy yesterday, and J.P. Morgan was one of its clients. Item E, there is a lot of council travel to these countries begging for air routes to our airport which makes me think that the airport's curfew is going to be either modified or just eliminated. Item F is the City Manager's day-to-day, according to resolution 73799 is November 2nd. Mr. Mayor, this gets back to council's reinstatement of sick leave, whether or not the City Manager is going to retire on or about today at midnight to be able to cash out that sick leave that you gave back, which is her right to do, and I don't have any problems with that at all. It's just that I'm kind of wondering if she's going to stick around, which is her decision to do. But November 2nd is the point where you have to have a 60 day notice of voluntary separation in accordance with the employment contract language. So lot of employees are kind of curious about that. And I think that that should be discussed. Other than that, we should be very grateful that San José Mercury News is keeping San José in their masthead. Came very close to an amalgam of Bay Area newspapers. So you should tell people to subscribe to them. Thank you.

>> Mayor Reed: That concludes the public comment on the public record. Is there a motion?

>> Councilmember Nguyen: Motion to note and file.

>> Councilmember Herrera: Second.

>> Mayor Reed: Motion is to note and file, all in favor, opposed, none opposed, that's approved. Boards commissions and committees. We have a request to approve the bicycle and pedestrian advisory committee downtown park board and traffic appeals commission work plans for fiscal year 2011-12.

>> Councilmember Nguyen: Motion.

>> Councilmember Herrera: Second.

>> Mayor Reed: All in favor, opposed, none opposed, that's approved. We have no annual reports to consider for the committee so that takes us to some other recommendations and requests. We have deferred Councilmember Chu's request on the suicide prevention strategic plan to next week as he's out of the country today. That takes us to number 3. Which is a request from Councilmember Rocha and other councilmembers, that direct the City Manager agendize workforce hiring practices for council consideration and discussion, et cetera. We'll take up that memo. Councilmember Rocha's here. I presume to talk on this. So give him a chance to do that.

>> Councilmember Rocha: Well, I think to start, mayor, thank you, is I think the City Manager had an interest from the deferral last week, had to speak to the item, as far as I'm concerned I don't have any more to add to this unless the City Manager has a different opinion on how we should approach this.

>> Mayor Reed: Okay. You can certainly add to it later at the end of the discussion. I have some questions about it, some concerns and some issues. Let me just get those out now. I do have some personal experience

long before I was on the city council dealing with diversity issues and in fact Councilmember Herrera and I both shared an Air Force occupational specialty at one time dealing with some of these kinds of questions, and so I'm interested in a more clear definition of what the problem is that you're trying to address as one level, one question. The other question I have has to do basically with the charter and how we avoid as a council from stepping across the line that's drawn by the charter between the City Manager's duties and obligation and ours. Because the charter is specific about department heads being brought to the council for approval, and the manager's got the authority and discretion and responsibility for making other decisions. And then, the third area of question is, how California law and proposition 209 relates to the request, because I know we can gather ethnic information at a certain level, I think only if the employees voluntarily give it, and there are limits on how we can share it, and so that's just the other area that whatever we do of course has to follow the state law. So let me just go back and just try to sort out, you know, what is the issue we're trying to deal with. Because if diversity is the issue, hiring practices at least today are a lot less important than what we're doing at the other end of the workforce. Because we're certainly cutting a lot more people than we're hiring. And if you focus only on hiring practices, I think we're missing, you know, a large chunk of what affects our workforce. Not having seen the demographic data, my anecdotal observations would be that our workforce is more and more diverse as it gets junior, more junior in the organization because the people who have hired more recently it is just a more diverse pool. So as we're having more senior people retire, at the top, and we're not bringing in junior people because we're continuing to shrink the organization, I think that has an effect on the diversity of our workforce. I'm not really sure what it is but the more junior people are the ones that have gotten laid off with our seniority system. So I think that should be a cause of some concern in terms of the diversity of our workforce. Then the other issue I have is the idea that by going outside the city, we can get a more diverse workforce. Because what I've seen is our bench people coming up through the ranks are more diverse, and that bringing them up through the ranks is a pretty good strategy for diversifying the organization from top to bottom. And my experience in the Air Force, that being able to bring people up as a key part of diversifying the workforce because it's really hard to bring in people from the top. And when I've been in the national search mode with looking at a lot of pools of people in the national workforce it's typically not nearly as diverse as our own workforce. So I'm kind of a fan of promoting from within. And so I think that's good for morale and it's also good for diversity. So those are some of the issues and questions I have. I'd like to at least give you a chance to talk about any of those --

>> Councilmember Rocha: Well I think for the most part I agree with anything you've just said. As far as any different point, I don't think I have one. Asking the question and knowing the answer would help with the possibilities of the issues you just spoke to. For me it's a matter of having the answers to those questions and making a decision whether it's necessary or not. It's a very difficult issue as you mentioned with prop 209 and the focus for me is not about pure diversity, this is about opportunity. And also in terms of the strength of our workforce as you mentioned. Without taking that leap of faith in terms of at the very least posting a position that's open then we don't know and we don't -- again that goes back to a lot of the unknowns that you spoke about. How do we know what we are not taking advantage of if we don't at least give that effort a try. I think the other part of my motion or recommendation is to have a bigger discussion about and understanding for me because I don't know the practices that the City Manager goes through on all her hiring. And I have no interest in compromising any charter rights or even venturing into micromanaging. I have -- that's the last thing I want to get to and I think the City Manager does a fine job at that. But looking at this memo it raises some questions to me and again a lot of them are similar to what you just mentioned. So unless I have the answers to those or the information, then I don't really -- it's very difficult to weigh in on those because if there is no issue and we feel we are representative of our workforce and our city then there really is no further to go with it.

>> Mayor Reed: Let me ask Alex Gurza to talk about item number 2 on your list of three recommendations. Because I think getting the data, knowing what the starting points, it's kind of important to any analysis and the request for demographic information would be handled by Alex. You know what can you give us what can you provide what do you have and what are the restrictions and you prop 209 and the way it gets provided.

>> Alex Gurza: Good afternoon, Alex Gurza deputy City Manager. Mayor as you suggested, we do collect demographic information from employees. Employees at their option can specify their ethnic background. And we are clear however, that that information is confidential, and we'll not be released by individual. That does not mean that it doesn't get released in aggregate form or in a form that wouldn't allow an individual to be -- that information to be identified. So for example, we can run reports that give the entire workforce, and for those that

do respond and what the demographic nature, surely we have information about gender breakdown, percentages male to female in terms of employees and that's the type of information that we do and can provide. As it relates to prop 209, and let the City Attorney add anything there, but clearly under prop 209 the focus really is on outreach, when you do hire, you clearly can do outreach, to get the most diverse pool possible, and that really is where you want to focus on, is to bring a qualified and diverse applicant pool when we do hiring.

>> City Attorney Doyle: And I'd just add, I think the simple answer is, you just can't make hiring decisions based on race or gender. 209 that's where it's clearly directed to prohibit that activity. But keeping the data is and just for statistical purposes is something else.

>> Mayor Reed: Councilmember Herrera, had you a question or comment at some point there.

>> Councilmember Herrera: So I mean the city can have a policy of wanting to have a diverse workforce without necessarily violating 209?

>> City Attorney Doyle: I think you can have a goal of wanting a diverse workforce. You just can't make hiring decisions based on ethnicity, gender, et cetera.

>> Councilmember Herrera: I support the spirit of the memo because I think all of us want to make sure, I think we all share this especially our City Manager shares the desire to have a diverse workforce and to make sure that you know that we do that. I know that's a personal value of mine. And I've commented on certain career fields in the city where I don't see enough women, for example, in law enforcement and in the fire department. So I certainly share the concern about making sure we have a diverse workforce. I think that the answer to this, though, could be some of these questions should -- I think the proper way to address this would be asking the City Manager to come back with an info memo on that information and I would like to hear from Deb to see how she -- how that sounds to her.

>> Mayor Reed: Deb.

>> City Manager Figone: May I please, thank you. Yes, actually, thank you, councilmember, if it hadn't been raised I think this is best responded to first in an info memo. I do agree with the spirit, certainly would not want to be here, especially being the highest ranking female in the workforce conveying anything other than my first support for diverse workforce. I think though that there are some assumptions being set forth in this memo that are best responded to, first, in writing. And then if the council feels a discussion is needed, maybe even as part of my performance review, that's proper the better place. Some of the assumptions that I'm very concerned about here are statements like we're making a choice that their appointment takes the least amount of time and resources or we should be paying special attention to how we hire the individuals in the workforce. Nobody could be paying more special attention to the hiring in this workforce especially in the context of what we are going through now than me, who you rely on for those decisions. We have not abandoned open recruitments and I think it's best that I express what I do consider on your behalf in writing. Because I think giving it that sort of time and attention, because it is very complex set of considerations, especially given the moment in time we're in. The fact that we have interims stepping up who want to step up during the most difficult time in our history, take a risk, knowing that they may or may not get the job, just outright, or might have to go through a competition, I think is really remarkable.

>> Mayor Reed: Or that the department might not exist next year.

>> City Manager Figone: The department might not exist. I've had some very candid conversations with our interims that they might be interim for a long time without any certainly at the end of that period because they may not have a department. What we are hiring people into, what we're advertising, what the benefit structure will be, what we're bringing people into is a very important set of considerations that I've got to weigh, as we go forward. So the other thing is, the list of these positions. I know the conclusion, some under the charter are not subject to council confirmation. You know, in other cases, we are waiting to see what happens in human resources. Alex is a deputy City Manager. He's not an interim human resources director. We have the Team San José appointment was a stroke of luck, that Bill Sherry was willing to go over there as our aviation director, to help navigate through. Normally Team San José wouldn't even be our recruitment. Some of the things I would just like

the council have the benefit of my thinking by putting it in writing. And then if you choose to bring it to a council discussion or discuss it with me, in my performance review, I think that probably would be the best way.

>> Mayor Reed: Thank you. A couple of things, back to Alex. Item 3 on the recommendation was for comparative purposes, to the extent possible, provide demographics for the city of San José, I guess we're lucky, we just finished a census, there ought to be some pretty good demographic information available. I know there's something about the census posted open the Website, I think it's maybe the Planning Department Website. Because I've read through it. That -- I don't know if you could just take that. It may need a little massaging to get it into a summary fashion, it might be helpful to the councilmembers. If it's a good source and relatively recent, it could be useful. What could you produce in terms of the demographic information of the workforce, without having to, you know, do a huge amount of work? I know you already produced reports and some of those reports are pretty simple in terms of getting them out of the database. Because I don't think the memo contemplates collecting more info, it is marshaling what we have and providing it to the councilmembers. What do you think you can do with that without a huge staff resource problem?

>> Alex Gurza: Sure, one thing is that diversity is a very broad term, and when we talk about diversity, diversity covers many different types of issues. In terms of what we have however, available to us in terms of demographics, would be easily available would be gender, and then the self-identification of racial backgrounds. So that would not take a lot of work to do a citywide demographic summary data of those two criteria. Those self-report on race and ethnicity and gender.

>> City Manager Figone: And mayor if I could just ask Alex a question, put you on the spot here, because when I went through the police chief recruitment and met with many, many sectors of the community, the issue of sexual orientation came up quite frequently. And I'm assuming we would include that in diversity. But most likely would -- that would not be part of our statistics, correct?

>> Alex Gurza: Again, that's an excellent example of diversity, whether it be sexual orientation, whether it be religion, whether it be -- diversity is very, very broad, but we don't have that type of data. So the only type of data

we have is gender and self-reported race and ethnicity. So when you look at that data to support and keep in mind there are other types of diversity that wouldn't be reflected because that information simply is not kept in our payroll system and our personnel records.

>> Mayor Reed: Is that information that we collect when people fill out their employment application if they choose to self-identify they check one of the boxes like the census thing?

>> Alex Gurza: Absolutely, when the employee reports online they can choose to self-report, they can check one or more boxes. Also online now, an employee can go in and actually, if they let's say didn't select before, they can go into the system and select now. So yes, but it -- generally it's done at the time of employment, of application.

>> Mayor Reed: Okay. So we could get the census related for the city data and the demographic data, I think to satisfy the request within a reasonable effort, without having to go into a whole work plan analysis, ought to be able to do that.

>> Alex Gurza: I think it would be important to clarify, when we collect that data as application, that data is separated, not city attorney's point, we do not make and cannot make any hiring decision based on that. We collect it for statistical purposes but that information is not made available by hiring managers so that decisions aren't being made based on information that an employee confidentiality chooses to select.

>> Mayor Reed: And there's another limit that I can remember hearing something about, in terms of how you produce the data. So if you produce data for the entire workforce, that's okay. But if you produce the data for a very small group of people, in which you could then figure out who's who, that's probably not okay.

>> Alex Gurza: That's correct. And we usually -- we coordinate with the city attorney's office on the type of request, for example, a -- if there's a can for information about demographics in a work unit that's so small that someone would be able to identify who that is, then we generally would not release that information.

>> Mayor Reed: Okay. In terms of the memorandum and the request, we have an entire city workforce, current senior and executive staff, so is the current senior and executive staff too small a pool? I'm not sure how you define senior and executive staff so I'm not sure how many people might be in that.

>> Alex Gurza: Sure. We have release they'd kind of information in the past. At least from my perspective we can confirm what the City Attorney senior and executive staff would not be too small. It has shrunk over time but it used to be over 100 people and that would not be able to be identified by person, and we define senior and executive staff under the city manager's appointing authority departments would be anybody at the level of a deputy director of a department and above. It would be deputy director, assistant director, directors, along with other people in the City Manager's office. The -- so I don't believe that would be too small. And I just noticed on the request there's also age so that was the other issue of demographics that we do have that. Again, that is another example of something that we would not produce by person. But clearly, we can -- we can, we have and can, produce average. What is our average age of our workforce, what's the average age of, for example, employees in a certain field, police, fire, for example. That kind of thing we can also produce.

>> Mayor Reed: So -- yes.

>> Councilmember Rocha: Finally on one point, and that's the point the City Manager made about assumptions made within this memo. I'll acknowledge that there may be assumptions made in this memo, and again it's based upon the fact that I'm not privy to that information nor to the thought process entirely of some of the appointments that's been made. I respect the fact that I don't know that and that's part of the questions I want to ask as well. We've had some brief discussions, in closed session so I can't speak about that but as we've done these hirings and appointments we've had the opportunity to have a brief discussion. So if I could encourage the City Manager to put some attention on item number 1, for my benefit so I'd understand more the process, and the thought process that she spoke to, about how she's made the decision.

>> Mayor Reed: Okay. I think having an info memo explaining this is probably the first step and if there's any further work or analysis or meetings or discussions need to be done, we at least have a baseline of where we

start. So I certainly would support Councilmember Herrera's suggestion to do that, if you want put that in a motion?

>> Councilmember Herrera: Yes, I move that we would answer these questions 1, 2 and 3 on the memo put forward by Councilmember Rocha and other councilmembers. Have City Manager respond to that, in an info memo.

>> Councilmember Nguyen: Second.

>> City Attorney Doyle: Mayor I have a comment. Because at the beginning you raised a charter question, I want to make sure we know where the line is for the council's benefit. The charter specifically says that councilmembers cannot dictate the appointment or removal of individual employees, or department heads. With the exception of ratification process for department heads as the City Manager pointed out.

>> Mayor Reed: Department heads.

>> City Attorney Doyle: Department heads. But the charter does say the council makes precedence to use and fully and freely discuss with the City Manager anything pertaining to the appointment and removal of officers or employees. Whether it's done as part of an evaluation process or info memo, however you want to go about that but I want to make sure you know where the line is, you just can't give directions as to who or what to do in making your appointments.

>> Mayor Reed: Okay. Motion is for an info memo, I've got a request to speak, I'm going to take that now. Mr. Wall.

>> David Wall: I do not concur with Councilmember Rocha's assessment of the City Manager with reference to hiring practices. Over the years, City of San José used to have a very good way of hiring people. It was civil service testing. They moved away from the personnel department offering tests of people to ensure equal

opportunity. Now what has been done for several years, if not decades some are these tailored questionnaires. These tailored questionnaires can be a good thing if used with proper jurisprudence. But more than often, a person goes, a hiring manager goes to a conference, becomes friends with somebody in the industry. All of a sudden, a position opens up or is created. A tailored questionnaire then surfaces, tailored to the friend. This business has been going on for some time. I'll give you an example. Look at the program manager creation at the environmental services department source control. Then look for a tailored questionnaire and then review the person's qualifications to run a source control program which you currently have been under the EPA's watchful eye with an administrative order since 2005. The other part of diversity is controlled too by the civil service system. The civil service commissioners that you will interview. Let's see if they actually know their jobs, and the authority that they have which is very broad to step into any department to look at things that they can control. As to the city charter, Mr. Mayor, you love a ballot measure. It is time to change the city charter with reference to the very broad powers of the City Manager. It's an archaic institution that cannot keep pace with a city government that is make moves to have nothing but contracted employees.

>> Mayor Reed: Sorry your time is up. Before we vote on the motion, I had a question about my concern about the diversity of the people that are no longer working for us, the 2,000 people that we've lost over the last ten years. And the six or 800 -- we don't know about the future but we know the people have left, jobs have been eliminated and we've shrunk the workforce. In the data, spinning the data, can you do that easily to look at the people that have left in the last year, or the last two years or some period of time, to just sort of vet my theory that our younger more junior workforce is more diverse than our average workforce? Is that possible to sort that out? Because I am concerned about the people that we're losing. We're likely to lose a bunch more in this next year.

>> Alex Gurza: Short answer, Mayor, is I believe we can pull that data. Just to clarify, the people in our seniority system that get laid off, it has nothing to do with age. It has to do with length of time in employment. So if somebody was -- it's sort of the last in, first out in the layoff process. So we could clearly look at people who have separated from the city in the last three years I think it would be possible, I'll double check, but it would be possible to get demographic data of that group.

>> Mayor Reed: I'm not asking for a bunch more staff work, but if you're just doing the query, and you can sort that out, I think it would be helpful at least certainly answering my question about being concerned about those demographics, because we certainly know they're more junior.

>> Alex Gurza: Right.

>> Mayor Reed: That's right now is probably all we know.

>> Alex Gurza: Exactly.

>> Councilmember Herrera: I'd add that to my motion.

>> Mayor Reed: Okay, we will do that. On the motion all in favor, opposed, none opposed, that's approved.

>> Councilmember Rocha: Thank you mayor.

>> Mayor Reed: Mayor Reed Councilmember Rocha. Next item is H-4, request from Councilmember Oliverio to provide information about the chaplaincy program before January of 2012 so the council has that information in budget discussions next year. Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. Fairly brief memo, as you stated, I don't think there's much more to add. We've had the chaplaincy program for a while, since 1977. There's multiple instances of funding of these programs throughout the United States, as well as in our congress and senate. And so I understand before you can ever make a budget decision we have to figure out on the policy issue side of the fence I'd simply like the City Attorney to examine it and bring it back to council sometime in January.

>> Mayor Reed: Okay, well it may not be a leg issue, it may just purely be a budget issue I'm looking at your questions.

>> Councilmember Oliverio: And I'm not also advocating 100% funding. I'm is already saying, we spend money today on charities and why don't we share some of these funds with the chaplain that's obviously manage a lot of serious issues within the police force that suffers from much higher rates of divorce suicide and alcoholism.

>> Mayor Reed: In terms of the information on the budget cycle, shouldn't be too hard to provide?

>> City Attorney Doyle: No. There are obviously some legal issues that deal with church state but we have looked at ways and we're looking at other communities as fund and I think that's something that we'll report back on.

>> Mayor Reed: But I can answer a couple of your questions and even some that you didn't ask just to clarify for the record that the chaplaincy program is by and large almost most of it if not all of it is paid for by donations from our police officers. They collect them through the POA. I think our firefighters may have started contributing some as well, and so the bulk of the program is paid for through the POA and the local 230, and whatever city money has gone into it in any fashion in the past has been a small piece of it. I don't know how much money there is but I do know that it's primarily driven by donations from the POA members.

>> City Attorney Doyle: Just for the record I've had conversations with the POA's attorney about the issue too. So I think there is more to report back probably as part of the budget process.

>> Mayor Reed: Okay so on the request? Motion to --

>> Councilmember Oliverio: Sorry motion to approve my memo as submitted to the city attorney's.

>> Councilmember Nguyen: Second.

>> Mayor Reed: Motion to submit this for information back in time for budget cycle. Mr. Wall.

>> David Wall: First of all it's 100% voluntary contributions. And it's not just limited to police officers and the POA. I have had the privilege of donating as well so citizens donate. And I think that this is an outstanding proposal by Councilmember Oliverio. And if anything this city needs is to have God on its side, I mean, you folks are -- you really need a lot of help. But this chaplaincy program is very popular with the police. And also, the fire department, I believe, has their own chaplaincy program as well. That, I do not speak to because I do not know the details of it that much. I've met one of them. But this -- this should be really something very easily to fund. And it should be funded. And it shouldn't be any argument bit. I'd like to thank you, Councilmember Oliverio. You help kids about their speed around their schools. You want performance measures for proper hiring and now you're helping out making sure God's in the workplace. Outstanding. You will be mayor some day.

>> Mayor Reed: That concludes the public testimony on this item. We have an item to defer this to staff. All in favor, opposed, none opposed, that's approved. Taking us to item H-5, the request to approve the extension of term and interim reappointment of the fire department employee representative to the board of the Police and Fire retirement plan. Sean Kaldor.

>> Councilmember Herrera: Motion to approve.

>> Councilmember Nguyen: Second.

>> Mayor Reed: Motion to approve the recommendation. There is a letter from local 230 in the record. Councilmember Herrera.

>> Councilmember Herrera: I just want to say I served on the Police and Fire board with Sean, we're are lucky to be able to have him continue and I support this motion.

>> Mayor Reed: No requests to peek. All right on the motion, all in favor, opposed, none opposed, that's approved. Thank you. Only thing we have left is open forum. Mr. Wall.

>> David Wall: I would also like you to have a list of former managers in the city whatever level they're at who retire out, cash out their sick leave and are then hired back as consultants. This gets back to the revolving door issue which in my opinion should never have been touched. But nonetheless you folks are smarter than I am in theory. Have a list about what's this costing you mayor about these high paid managers who cash out their sick leave and come back as consultants. I can list three of them right now, but I'll wait. I'd like to thank the city attorney for being the only apparent advocate of the protecting of the taxpayers with reference to this really bad land deal for the Oakland A's. This ability that the citizens can vote whether or not they want to throw away \$18.2 million, the debt service on that amount of money, and the administrative costs, should be for the taxpayers to decide. And not a bunch of hair brained politicians trying to make a deal. The last thing I'd like to say is about these ecopass. Now, the employees are wanting to know, what are they going to do with them come December 31st? Because January 1st they're of no value. Now your greenness is really disappearing pretty quick, Mr. Mayor. Some employees say they're going to give them to the Chinese Kung Fu masters to make Christmas ornaments out of them. There's all sorts of ideas, but Mr. Mayor, why don't you rectify this whole issue by just getting rid of one of your senior policy advisors, just flat-out firing one of them, maybe two of them, and transfer the funding back to the ecopasses for the employees. Then you would have some ability to say you're doing something good for the environment, in my opinion. You cut CO2 from your senior policy advisors, they generate so much of it, anyway, by getting rid of some of them.

>> Mayor Reed: Sorry, your time is up. That concludes the open forum, concludes our meeting, we're adjourned.