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>> Mayor Reed: Good afternoon, would like to call the meeting to order. This is Rules and Open Government committee meeting for September 12, 2012. Any changes to our agenda order? Nope. Then we will start with the September 18th council agenda. Any changes on page 1? Any changes on 2 or 3? Page 4 or 5? Page 6 or 7? Page 8 or 9? I have some written requests for additions, a commendation of San José action sports regarding lake Cunningham park, proclamation for constitution week. Request for excused absence for Councilmember Constant. Any other requests for changes or additions, et cetera? We have two meetings on the 18th, or -- because we have a special meeting, study session. Is that noticed as part --

>> It's B on the Rules agenda.

>> Mayor Reed: So that will -- I'm just -- that will be a separate notice, separate agenda.

>> Yes.

>> Mayor Reed: Okay.

>> Councilmember Oliverio: Move to approve with the changes.

>> Second.

>> Mayor Reed: Move to approve, I'm sorry request to speak. Mr. Wall.

>> First, good afternoon to Your Honors. Item 2.11 the master agreement with RMC water and environment to develop a master plan for South Bay water recycling program. On August 1st his honor Councilmember Oliverio asked the City Attorney for an info memo, concerning the use of the sewer service and use charge which funds the plant capital improvement program fund 512. For the use of these moneys to fund this plan. There has been no info memo, with reference to the legal interpretation to use the sewer service and use charge which is the base funding for fund 512 which is the capital improvement program fund. And so since this is showing up on the TPAC

agenda for tomorrow, Mr. Mayor, treatment plant advisory committee, for those people at home, it would seem to be well, a mystery has developed and I'm in a quandary as to how come there's been no ruling from the bench as far as the legalities of moving forward with a \$2.4 million contract that basically permits the expansion of a program that the Cupertino sanitary district and the city of Milpitas has objected to in writing and with threats of legal action. So I will retire to my seat still in a quandary as to how this can proceed especially on the 18th, city council agenda, but also, on the TPAC agenda without a ruling from the bench. Thank you.

>> Mayor Reed: I have a couple other requests to speak and I'm not sure where they apply based on the notes on here. Mr. De la Rosa. A different item or this item?

>> Yes, 4.4 on the 18th agenda.

>> Mayor Reed: Okay, this is the time.

>> Okay, thank you, Rich de la Rosa, forest consulting representing rescue air systems. As part of 4.4, in the recent action on May 15th the council had voted to reduce fees for high rise construction as a result of trying to get additional buildings going in the downtown core. One of the items that were on that section had to do with the air replenishment system in which the city was advising the City Attorney to move forward with revising the city code to not require such a system in a high rise. As you all know, this building certainly has that type of fire protection system which allows firefighters to replenish their air tanks. I'm not clear here if in fact that portion is also going to be on 4.4, since I don't see it specifically listed, that it's only talking about the construction taxes on the development. It would be -- it would be very important for us, as citizens, and certainly for our client, who builds these systems, that a fair vetting of this particular issue be given prior to going back to council for approval. The item of the air replenishment system was not even discussed on the 5-15 city council meeting and I think that it would be fair that any additional facts of that be brought out in the safety committee, itself. So that would be our request. That the ordinance be sent to the safety committee before going to the city council.

>> Mayor Reed: That concludes the public testimony, I think. Martha O'Connell I think you're on the next item. All right, anybody else on this agenda item? Staff, you want to comment on what is the agenda item 4.4?

>> City Attorney Doyle: I can actually touch on both. The first, 4.4, is I believe it just deals with construction taxes, it doesn't deal with the air rescue systems. That's an issue that I don't know where it is. It was discussed at length a few years ago, came to Rules a number of times. Council I think there was some discussion with the prior fire inspector. And we -- I'm going to have to go back and regroup with my staff and probably fire to figure out where we are on that. I remember there were some trade issues as well. But it's my belief that this is just construction taxes doesn't deal with that and this is coming forward from planning.

>> City Manager Figone: Excuse me, Rick. On that I would recommend we not hold up construction tax issue, and we can do a info memo at least updating the council on where that issue lands.

>> City Attorney Doyle: I would agree with that.

>> Mayor Reed: We just need to make sure the agenda language is right. It seems to be right for whatever it is we are contemplating doing.

>> Councilmember Oliverio: Mayor.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: City Attorney, to clarify that item is not required by state law, it's something the city chose to do on top of it.

>> City Attorney Doyle: That's correct. And then the separate, just to briefly mention on the opinion. At the time that that came out, I wasn't aware that the City Auditor's report on the environmental services and specifically dealing with the prop 218 issues and the sewer service and use charge was about to come out. I think it was

going to committee and then it ultimately came to council. And so I wanted to wait till that was addressed because staff did respond to that audit as well. So a number of those issues have been tackled in the City Auditor's audit. I think suffice it to say if we approve as to form this agreement it's legal. But if need be, we can do a paragraph to that effect.

>> Councilmember Oliverio: And just since my name was brought up in the public, my question was since the question of 218 comes up again, should there be a memo? It stipulates from the viewpoint that we feel this is fine?

>> City Attorney Doyle: And again, the City Auditor has spent a lot of pages talk become concerns she has with the fund and possible 218 issues. There has been a response to that. I think it's also a -- we're working with staff to try to work through some of those issues. So I think there's more to come on that.

>> Councilmember Oliverio: Appreciate you letting us know what the answer is, thank you.

>> Mayor Reed: Vice Mayor.

>> Vice Mayor Nguyen: Thank you. Rick just for clarification. So the air rescue system that portion of it will come from your office through an info memo or come back to rules?

>> City Attorney Doyle: We'll get with fire on that and we would get probably together with fire on that. I just don't know where it is. It's been a few years. This issue doesn't deal with that.

>> Laurel Prevetti: Mr. Mayor.

>> Mayor Reed: Laurel Prevetti.

>> Laurel Prevetti: Thank you, Mr. Mayor, Laurel Prevetti, assistant director for planning. Back in May it was part of the downtown incentives to do away with the single-source breathing air issue. So it was our intention to bundle it with the construction tax. I think the public has raised a fair point that the agenda item wasn't clear and if it's the will of the committee we can bifurcate the item and bring the construction item first and then the breathing air item in a subsequent action so council can have that additional vetting if it wishes. We thought as a fairly -- since this had been discussed with fire and had been considered as one of the issues, inhibiting downtown high rise construction we felt it was important to bring the bundle of ordinance changes to the council. So if -- and I completely agree with the public, if our agenda item didn't adequately identify that, then we're happy to work with the attorney's office and have a separate ordinance so it's very clear to the public what is coming forward.

>> City Attorney Doyle: It speaks only of taxes and I think that's a concern.

>> Mayor Reed: Well it will the work is done, let's change the agenda so we can move forward. If the work hasn't been done then we move it as separate items. It wasn't clear worn the work has been done.

>> City Manager Figone: I'm hearing Laurel the work has been done.

>> Laurel Prevetti: Yes.

>> City Manager Figone: And vetted internally. So if council agrees we should just improve the title and drive it forward.

>> Mayor Reed: Council has already given direction to do this. So I don't have any problem with moving it on to the council. We're talking about the 18th agenda and then changing the agenda language, we probably ought to not have it on the 18th I think is the question if the agenda's broader than the language, and we have time, we should do it at a later date since today is the -- what is the day? 12th. I'm just thinking of the ten day rule.

>> City Manager Figone: So move it to the 25th would be one option.

>> City Attorney Doyle: We can continue it, yeah and we just need to change the agenda language.

>> City Manager Figone: I think that that's what we should do then if staff is saying that we're ready. Let's make it right.

>> Mayor Reed: If the work has been done let's put it on the agenda, and let's move ahead but let's not do it on six days' notice or whatever it is. Make sure it's ten days. The 25th will the ordinance change language and all that stuff be out? That's probably away we ought to do. Take it off the 18th and consider it again for the 25th. Vice Mayor.

>> Vice Mayor Nguyen: Yes, I'm having a little bit of trouble just putting this on the 25th council agenda. I like to see the status update on what staff's been working on, what the fire department's been saying, what's their perspective and perhaps if there's an opportunity to move it to the Public Safety, Finance and Strategic Support so we can vet it before -- we probably make a recommendation that it goes to the city council for a full discussion but I'd like to see what's been happening before we decide to move it to the 25th city council agenda if that's okay.

>> Mayor Reed: Do we have any projects that are pending that -- for which this might be time sensitive? Been around for years.

>> Laurel Prevetti: We don't have any projects yet. But we are talking about prospective developers who are eager to just these incentives. So if it is the will of the committee to bifurcate the two issues and have one go back through committee process, we would then work with the attorney's office to make sure that at least the construction tax piece can move forward. But it was our understanding from the May council action that this was no longer an issue and that we could move forward with the ordinance classifications. But if there's a need for additional vetting then we're happy to separate the two.

>> Councilmember Oliverio: Mayor just want to say fully cognizant of the conversation we had that it was a package of incentives that was offered, and this was one of them, and also being that this was not required by state law, this is something San José did at one time to benefit one vendor in years past. So in the end it is a cost, but it sounded like the council had made the decision in the past vote. But you know, whatever, if my colleagues have a certain strong feeling then I'll support it.

>> Vice Mayor Nguyen: I just feel uncomfortable. Because we didn't even talk about it at the May meeting. It was put together as a package. I wasn't aware of that. It's my fault for not thoroughly reading the entire memo but I just want to have an opportunity to look at what staff has been doing. If there's a possibility it can move through the committee first, but if not, then we can definitely move to the full council, it's just that there's no information about this. I think it's a very, very important Public Safety issue. I just think it needs to be vetted before we move it to the full council.

>> Mayor Reed: Let's separate these things and take the tax incentive part of the thing on the 18th because that's teed up and ready to go. And then figure out when we are going to bring the rest of it, we can talk about that. Is the memo out? All right, so after we've had a chance to look at the memo, maybe it will be ready to go, maybe it needs to go to committee. Why don't we talk about that next week, whether it should go to the council or committee. I don't think I'm going to be here next week but maybe the week after. What I don't want to do is delay this for months because we got to find a place on the public safety committee work plan.

>> City Manager Figone: And Laurel, correct me if I'm wrong, if the memo is already out then that part of the recommendation is out. So when the council hears this on the 18th you can decide just to act on the fees, and refer the breathing devices back through committee.

>> Laurel Prevetti: That's correct. Both the staff report and the draft ordinance should both be posted, available for the public now. And I think that would be -- that might be a good way to have the breathing air move separately on a separate path. And then we can modify the ordinance to delete the reference to the breathing air

if that's the will of the full council and have that portion come back at a later date. And then the second reading on the construction taxes would only be on the construction tax. So that might give you the most flexibility.

>> Vice Mayor Nguyen: I would be interested in bifurcating the two items into --

>> City Attorney Doyle: Can I support -- just from my standpoint, I'm getting word that the council ordinance does not address the breathing devices. There's a communication issue between my office and staff, so we need to get to the bottom of this.

>> Mayor Reed: Okay, so let's leave the agenda language the same as it is, move that forward, and we'll figure out next week or the week after when and how we ought to move the other piece of it, okay? Anything else on this agenda? I think I need a motion still.

>> Councilmember Oliverio: You had one.

>> Mayor Reed: Motion with the changes that we discussed. We didn't have any sunshine waivers. On the motion, all in favor, opposed, none opposed, that's approved. Moving into the September 25th agenda draft. Anything on page 1 to talk about? Page 2 or 3? Page four or five? I see the boards and commissions and the neighborhood commission discussion will be in the evening.

>> Councilmember Oliverio: Question, mayor.

>> Mayor Reed: Yes, Councilmember Oliverio.

>> Councilmember Oliverio: Will there be a staff report or memo on that item? On 3.5?

>> Mayor Reed: Neighborhoods commission pilot program and the -- that's 3.5.

>> 3.5 will be coming from the City Manager's office.

>> City Manager Figone: Yes there willing be a staff report from my office.

>> Mayor Reed: Anything else on 4 or 5? Page 6 or 7 or page 8? One land use item in the evening as well as the boards and commissions things. I have a request to speak on these agenda items. Martha O'Connell.

>> Martha O'Connell chair of the senior commission. Just want to remind you that two years ago the senior commission recommended that open forum be placed at the beginning of agendas for all boards and commissions. The human rights commission made the same recommendation. And although the mobile home advisory commission didn't make a recommendation, that is their standard operating procedure. I don't know about any other commissions. Just reiterating the senior commission and human rights commission believes that it's in the public interest to let folks speak so that they don't have to sit through a two and a half to three-hour meeting before they get to speak. Thank you.

>> Mayor Reed: David Wall.

>> Excuse me. Item 2.8, the agreement with Roy -- and I don't mean to mispronounce his name, Roy Bouys consulting for construction management assistance on affordable housing projects. Seems as if this consultant has quite an in with the city for his duration sixth amendments. I'm asking whether or not the successor agency has jurisdiction under this and whether or not this falls under enforceable obligations. In other words, cult the guy loose. And also on these affordable housing projects are they being discussed having sewer meters placed with each unit, to keep the sewer service and use charge under the guys of proposition 2A in other words, paying for your sewage rather than these bulk agreement such as multifamily units as this sewer service and use charge is predicated on. But I'd look into this, whether or not you have to pay this guy at all or do business with him at all. Thank you.

>> Mayor Reed: That concludes the public testimony. One more comment on the hearings. There is no land use item I think on the evening agenda, we now have two ceremonial items and then the boards and commissions, the two items. Is that it on the evening? Okay, anything else on that agenda. Motion to approve.

>> Vice Mayor Nguyen: Motion to approve.

>> Councilmember Oliverio: Second.

>> Mayor Reed: All in favor, opposed, none opposed, that's approved. Next item is the study session on September 18th agenda. Simple agenda. Lot of discussion. No doubt on that. Anything to add, City Manager?

>> City Manager Figone: Just to point out we did add a small phrase to the title, which acknowledges that we are also going to respond to the council questions. So that, and response to council questions is new.

>> Mayor Reed: That's the multiple memos with a variety of questions.

>> City Manager Figone: Yes.

>> Mayor Reed: Okay.

>> Councilmember Oliverio: Mayor.

>> Mayor Reed: Yes, Councilmember Oliverio.

>> Councilmember Oliverio: City Manager, since there's no one here from the police department, can you share with the Rules Committee what will be presented to the council on the topic of using the police reserves?

>> City Manager Figone: Yes, we're in process of trying to provide some order to all the questions. And how we might respond. So we will have some written response which will likely be amplified through verbal presentation. I really see the bulk of the written material kind of setting up that which will likely be rounded out through PowerPoint. Because we're quite frankly going to be working really down to the last minute, and be able to be responsive to all the questions.

>> Councilmember Oliverio: I understand there was a survey done, survey requesting information from the policing reserves. I'm curious, what background was provided to the reserves prior to responding to the survey?

>> City Manager Figone: I'm not familiar with the survey but I'll certainly ask the chief.

>> Councilmember Oliverio: From what I understand there was no background provided to why there was a survey to the reserve command staff or to the reserves themselves and I think that seems odd. And so being that this is the Rules Committee on Wednesday and we have a council meeting on Tuesday, I'd like to see a better effort. Because I'm concerned that the survey casts the reserves in a negative light, because the survey left out many items about two-man reserve scars, fill units used as prisoner transport, and they were not -- the reserves or the reserve command staff was not made aware of my memo or the context of this discussion. And at that point, that once some people started to understand they came forward, but that was after the survey was closed. So I believe if the reserves were enlightened to what this councilmember was looking for and I believe others then we would have a much stronger rate of participation on that survey. I understand you know, the chief and the police officers union, you know, this survey was created I think in a way that's -- you know doesn't want to support it. I mean let's face it. If the chief or the prior chief wanted to use reserves they would have done it by now. But I find instead we are coming to committee, to council, with a survey that's really meant to dissuade any possibility of using the reserves. And I really would like a better effort made, in this response, to be forthcoming to the reserves and the reserve command staff on what opportunities are presentable to the reserves. Because I think we will get a much better rate of participation versus a random, hey, I'm going to ask you a question and not give you any context of what's behind the scenes. So we have between now and Tuesday, and I'm thinking that would be a good opportunity to correct what I've gotten feedback from.

>> City Manager Figone: So let me just say I'm not aware of a survey or if it was triggered in response to your memo. Do I think the beauty of a study session is to get all of the ideas and thoughts out there. In my view the study session isn't the end. It really opens up the conversation with council. We have questions and interests and ideas from many perspectives. So I will go back and understand what the survey -- how it's being used. I just read the section on reserves. I didn't see any reference to a survey. And in fact, my feedback is that this section needs to be beefed up because it is not responsive to the councilmember, or I think not only yours but I've heard questions from others. An important part of the reserve discussion like CSOs or any other alternative service ideas is how do we build capacity with the resources that we have. And so I hear your concern. I'm hearing you don't want bias and walking into the room, and I'm going to do my best with the chief and the staff who the staffing is to ensure this is a meaningful study session for the council.

>> Councilmember Oliverio: May I ask would it be possible for city management through the chief to alert the reserves to the actual memo that was written to say these were the questions, these were some of the opportunities presented?

>> City Manager Figone: You know, I see no reason that we shouldn't share the memo. What I would just suggest is that you know, we're going to hear from the chief in terms of his perspective around the opportunities with reserves. And areas where he might be concerned about using reserves. And as I think you know council you should be interested in hearing that. And so let me just bring that back. And you know ask that he share your memo with the staff.

>> Councilmember Oliverio: Okay so the City Manager has the commitment to share the memo with the reserves?

>> City Manager Figone: Yes.

>> Councilmember Oliverio: Thank you.

>> Mayor Reed: And if there aren't any surveys the chief could expect some questions about methodology?

>> City Manager Figone: Absolutely.

>> Mayor Reed: We're showing a 6:30 p.m. closed session on that. We still anticipate probably having that closed session.

>> City Attorney Doyle: Yeah, we would notice the closed session, one notice for the day, morning session to be continued at 6:30 and continue on.

>> Mayor Reed: But for council planning purposes I anticipate we'll convene at 6:30 for a closed session.

>> City Manager Figone: Yes.

>> Mayor Reed: I have one request to speak on this item, Mr. Wall.

>> First, I on it to be a closed session. I think it should be open to the public. Second of all, why isn't there a discussion of a military operation including the use of immigration, customs enforcement, the use of military police for stockade duty and for transporting these gang vermins to a third country prison system? You're just talking about this problem? They're gumming it to death. I think it's pastime that you bring in the hammer and crush this vermin for all time. You don't have the resources to keep you know giving them hugs and kisses. These people are hard-core criminals. They are nasty. They need to be put into submission in a permanent fashion and I don't see that happening. So once again, I think this should be an open session item. So people from the community can see what's going on with reference to not ridding our community of this vermin, but placating, accommodating them to maintain their residences here. Thank you.

>> Mayor Reed: That concludes the public testimony. Any further discussion on this agenda? Is there a motion?

>> Vice Mayor Nguyen: Motion to approve.

>> Mayor Reed: Motion is to approve the agenda. All in favor, opposed, none opposed, the agenda's approved. Taking us to a legislative update, state of California, Betsy Shotwell.

>> Betsy Shotwell: Thank you, Mayor, members of the council, Betsy Shotwell, director of intergovernmental relations. I asked that this be put on as a place holder as there are a number of bills on the governor's desk he has to deal with before September 30th. Legislature, they recessed a few weeks ago, but there are some measures, and today I noted it happened in Los Angeles the governor did sign the pension reform bill, AB 340. We had talked about this a few weeks ago when the legislature passed it and just as -- to reiterate, and I'm going to read this this proposal applies to all public employers and pension plans on or after January 1, 2013 with the exception of UC, as well as charter cities and charter counties that do not participate in the CalPERS system, including the cities of Los Angeles, San Francisco, Fresno, San Diego and San José. The proposal also excludes any retirement plan approved by the voters of any entity before January 1, 2013. So that will be the headline tomorrow for sure. So I'll continue to keep you informed as measures are being addressed at the governor's level before the end of the month. And following that. If I could, I would like to also just clarify one thing. With regards to the November ballot measures, city staff is reviewing these measures and intends to forward recommendations on those measures that have impacts to the city core service areas. The Rules Committee on the 26th with a one-way turn around to the council on the 2nd. We're working on that internally and I'll be bringing that forward to Rules because I know there was some questions on the dais yesterday. The council has the prerogative in their own right of taking action on measures that I won't be bringing forward, for instance.

>> Mayor Reed: Well I think this is probably the point to talk about the conversation we had yesterday about the league of California cities and their position versus our position. And so you answered part of that which is there will be specific recommendations brought through the process to the council on the ballot propositions. So I'm assuming that the legislative agenda process that we go through, which is just about ready to start again for the next year, is what guides the decision making along the way. And would be the guide for anybody that is

representing us anywhere, they would know what the City's legislative agenda is and what our processes might be. Because there are certainly questions that come before people who sit under the boards and committees that the council hasn't considered.

>> Betsy Shotwell: Correct.

>> Mayor Reed: But we have the legislative agenda process that maps out what our interests are. So with regard to what questions that might be posed to Councilmember Chu sitting as a member of the board of the league of California cities, he's got our legislative agenda. That's his guidance. Staff can help him, I think, on things that we haven't taken a position on because there's certainly things we won't have a position on specifically. And then, the other part of it is, so the items that you'll bring forward on the ballot measures are those ballot measures that fall within our legislative interests.

>> Betsy Shotwell: Correct.

>> Mayor Reed: Or legislative interest. There are many things in the state of California that are interesting that aren't really within our legislative agenda so those aren't the things you bring forward to the council.

>> Betsy Shotwell: Right, and they are also on the November ballot, as well, a number of measures.

>> Mayor Reed: So if there's a broader range of things that people are interested in, that gets fed into the legislative agenda building process that starts when? November?

>> Betsy Shotwell: I'm going to be starting to go to the policy committees in October-November and then with the priorities as well to Rules in December then to council following that.

>> Mayor Reed: By the beginning of the state legislative session we have the package of things we're interested in.

>> Betsy Shotwell: Correct. And also with the option in January sometimes depending on the outcome of ballot measures, so forth, they can be revised year round but if there are things that need addressing by the mayor and the council I can bring those forward in January as well again depending on the outcomes in state and federal with the November elections.

>> Mayor Reed: I think one of the questions that was raised by one or more councilmembers yesterday was whether we have or should have some sort of a formal policy about how people vote when they're on other boards and things representing the city. And I don't think we have a policy. We do have a legislative agenda that we discuss. I don't know of any policy that says you can't vote on something if the city hasn't taken a position on it.

>> Betsy Shotwell: I'm not aware.

>> Mayor Reed: City Attorney.

>> City Attorney Doyle: There is no formal policy but if you are a delegate you get the authority of the city to represent the city. The difference in the league, is when you are on the board of directors, it's the league of California cities taking a position, not the City of San José on propositions and things of that sort. To the extent they're league resolutions, that's where you get the direction and Betsy --

>> Betsy Shotwell: Which I take to council every year, right.

>> Mayor Reed: Well, I know when I sat on the valley transportation administration, even though I was appointed by the city council, I was a VTA board member. And I had independent fiduciary obligations to do what I was supposed to do as a VTA board member which are not necessarily the same as the City of San José. I don't know if that's the case when you take the oath at the league of California cities. And are you only able to represent the positions of your city, or are you supposed to do your own thinking, I guess?

>> City Attorney Doyle: Well, I think the VTA is separate in terms of your role. You are a VTA board member, you represent the VTA, not the city of San José. When you are before the league, the league of gives you direction -- I mean the city gives you direction on measures that are going to the league for league resolutions. But when it's the league board of directors, you're acting as a director of that entity and taking a league position. Council can craft a policy if it wants to and have that discussion as to whether or not they want things to be at least vetted beforehand. It would be more cumbersome but something at least we could look at.

>> Mayor Reed: I think it would be very cumbersome and probably unnecessary restraint on people who are serving on other boards. So councilmember Kalra is here, he's on the Bay Area air quality management district board, and we're going to hear an item that they're interested in now, and I don't think we want to place our councilmembers who are serving on boards in a position of saying well I can't take a position on that, whatever it may be, until my city council has taken a position on it, and then we have to go through a lot of stuff here. I just think that's way too cumbersome for especially these boards don't necessarily meet often, and you might miss a lot of votes. But I do think having our legislative agenda as guidance for people, then if everybody has some awareness of what the city's interests are, and that's part of what they factor into their decision making.

>> Betsy Shotwell: Correct well, and also, I'd like to add that when the councilmembers go to their policy committee meetings --

>> Mayor Reed: This is at the league?

>> Betsy Shotwell: At the league. I get the agendas pulled off the web, I circulate it to the appropriate departments and staff. Many times the city attorney's office as well, for feedback. We may not have a position per se but we provide the feedback and the background on the issue and, in addition, these meetings are often very spontaneous. They have measures come up at that time, at the meeting and you know again we try to be there if we can if it's local or in Sacramento but sometimes we captain but try to provide the background information or

input from the department heads and then we often meet with the councilmembers as well. It's their prerogative before this go to the policy committee meeting.

>> Mayor Reed: So those are the policy committees.

>> Betsy Shotwell: Correct.

>> Mayor Reed: And then there's the board members. So Councilmember Chu is both on policy committee somewhere and a board member.

>> Betsy Shotwell: Now he's just on the board.

>> Mayor Reed: Okay. I think Councilmember Constant and maybe Councilmember Herrera are both policy committee members.

>> Mayor Reed: And Campos, Councilmember Campos.

>> City Manager Figone: Mayor if I might, this is another fact or point for consideration. If my memory serves me correctly, for league assignments, the councilmembers throw their hat in the ring to the league. They're not assigned by the city. So that's maybe just one other difference, when it's an actual assignment as a city delegate to some board out there.

>> Mayor Reed: Yeah, we don't have a seat on the league of California cities board. Councilmember Chu just happens to have gotten selected by that board. We didn't appoint him to that board, did we?

>> Betsy Shotwell: Yes.

>> Mayor Reed: We have a seat?

>> Betsy Shotwell: Sometimes representatives from mayors have a designee and you have appointed Councilmember Chu over the last few years to be the representative for the City of San José. The at-large, one of the eight at-large positions.

>> Mayor Reed: But we do that with lots and lots of other organizations where we appoint somebody.

>> Betsy Shotwell: Correct.

>> Mayor Reed: I still think there's a different role where you're a board member of an organization versus the policy committee. I see there's a distinction there because you're taking a position on behalf of the league of cities. You're not taking a position on behalf of the City of San José.

>> Betsy Shotwell: Right.

>> Mayor Reed: Any other questions that got raised yesterday that we needed to address here as we said we would? Councilmember Oliverio.

>> Councilmember Oliverio: Thank you. Yes, I'm hoping for a narrower focus when it comes to statewide propositions, because there clearly are ones that are -- although, as the Mayor said, are interesting and enticing, but they really have nothing to do with the city charter and what we do as a city.

>> Betsy Shotwell: Very narrow.

>> Councilmember Oliverio: And then as far as the voting, all my colleagues on the council can certainly volunteer to be on those committees, if they'd really like to. But I think the VTA analogy was interesting as well as the league of cities and what the role is and all that. Betsy, since we're going to be talking about this topic shortly, is there anything on the governor's desk today to be signed that has to do with regulation of medical cannabis?

>> Betsy Shotwell: Not that I know of. I believe the major -- the bill I know you'd been asking about, Ammiano's -- assembly member Ammiano's bill did not make it out of the legislature. That was the one. But I'm not aware of any on the list that I've seen from the league related to that. That was the one that was being discussed.

>> Councilmember Oliverio: So the only regulation that the state of California legislature has passed is the 600 feet from schools, and that's it, they haven't done anything else.

>> Betsy Shotwell: The zoning.

>> Councilmember Oliverio: And we're waiting on a couple of Supreme Court cases to be heard in spring 2013?

>> City Attorney Doyle: Whether they're heard in spring 2013 or before or after that is anybody's guess. It should be heard in the next nine months but it's up to the cord.

>> Councilmember Oliverio: And did one get resolved, was it the Anaheim case?

>> City Attorney Doyle: The Long Beach case, the court -- the issue of federal preemption was resolved, and so that won't be decided.

>> Councilmember Oliverio: Thank you.

>> Mayor Reed: I'm going to go back to the legislative agenda when we go through that process. I haven't looked at that since last year when we went through it but somewhere in that legislative agenda process or document we ought to describe that it's the council's expectation that this is guidance for the staff and councilmembers who are making decisions on matters that-d on which the council has not taken a specific position. So that it's I think that will help clarify to everybody that if you're in some other agency making a decision

you can use that as a guide. Without having to come back to the city council for some sort of a decision, I don't think anybody wants to have to go through that process.

>> Betsy Shotwell: Okay. I will definitely include that reference.

>> Mayor Reed: I think that will help clarify its role. Anything else on the topic of legislative update state or federal? We have nothing to report at this time on the formal --

>> Betsy Shotwell: I do have a report on the federal soon, they just went back in the last couple of weeks and I will have a report out in Patton, Boggs.

>> Mayor Reed: Meeting schedule? Anything to discuss. Public record. I some requests from the public to speak, Mr. Wall.

>> Items E -- excuse me, items D through K require your attention and perusal. Item E specifically about deferring the water pollution control plant staffing report to December, the transportation and environment committee members decided that must have been too long. So they deferred it to November. I think that that is a goofy decision, sir. I think that anything relating to water pollution control staffing should be done on a monthly basis by this committee. And so chastisement is hereby tendered. On item I, this is regarding violating the peace and sanctity of a public official's neighborhood and property, should be a felony. Mr. Mayor, you have suffered from this type of violation where protesters come upon your property. I looked at photographs or videos of these protesters going upon the City Manager's property, sitting on her front porch. I think society demands that this type of conduct be severely rebuked. Because it retards, it acts as a barrier for qualified people to come and serve the public. If protesters can come upon the person's property in this case the City Manager and then the law requires the City Manager file a complaint or you Mr. Mayor to file a complaint or any elected person to file a complaint, society should file the complaint to deter this form of conduct, an invasion of privacy and the sanctity of your home. I tell you this much: I went to say in the memo that these protesters, the law should be modified to where they are severely beaten, in other words, physical pain comes into this equation. Now, a lot of people may

not think that's good, but you look at countries like Singapore. They don't pull these type of stunts there, and it also controls a lot of other criminal conduct. But at least we can make it or you can make it a recommendation that it becomes a felony because it falls under a hate crime. And I even think the City Attorney may have been interfered with at some period of time, I'm not certain. I don't like the City Manager's house, that's a final straw, I don't want that happening to any of your houses and your neighborhoods. President motion to note and file.

>> Vice Mayor Nguyen: Second. Oh, Martha.

>> Mayor Reed: You got a card in for public testimony? Okay. Come on.

>> I am G-4. I speak in support of the Liccardo, Oliverio, Herrera memo. I'm also looking at the latest one turned in by Councilmember Rocha, who is my councilperson, and he is talking about quality of life concerns. I was born in Berkeley, California. Then we moved to Santa Cruz, where I went to high school. And I've seen enough used hypodermic needles, marijuana paraphernalia --

>> Mayor Reed: Martha, we are going to take up these items separately. You can speak on them. This is just the public records section.

>> Oh, I'm sorry, is this the wrong --

>> Mayor Reed: I think so. We're not dealing with the council memos just yet. Give me a minute, we'll get there. That was public record. We had a motion to note and file. All in favor, opposed, none opposed, that's approved. Then next section is G. I had a question open one item we had last time that we were going to have staff get back to us and that was a memorandum from Councilmember Liccardo regarding the pawn broker ordinance and whether or not it was a minor thing that didn't need a lot of staff work analysis and policy issues.

>> City Attorney Doyle: I think that has to come back next week. It didn't make this agenda. And so it will be back on the 25th or whatever the day is. 19th, I'm sorry.

>> Mayor Reed: The question is whether it has to go into the priority-setting session, which is when, October 9?

>> City Manager Figone: October 9th.

>> Mayor Reed: So that will come back next week. All right, category G, we have a request by Councilmember Constant to change the excused absence. Motion is to approve the request. All in favor, opposed, none opposed, that's approved. Item 3 we have a resolution we need to put on the council agenda, the 18th, changing the noticing provisions that we gave direction on a while back, to make sure that we could adjust the calendar, if we have a very light evening agenda.

>> Councilmember Oliverio: Motion to approve.

>> Vice Mayor Nguyen: Second.

>> Mayor Reed: I have one question on the resolution and that is in the changes, page 12, the change on the open forum piece. When you look through it, we struck out one of the open forums and then we left in one for evening meetings. Maybe the parenthetical doesn't need to be in there. Because my intention is to continue to have an open forum in the afternoon and then again in the evening.

>> City Attorney Doyle: Yeah, I think that would be consistent. But the -- if the land use items are heard in the afternoon then our open forum, the way I read this is the open forum would be after the land use items. If the land use items are in the evening then can you continue to have the open forum in the afternoon and the evening as you do now. We can keep -- we can keep it the way it is if you want it for clarity purposes so that it's agendaized that way on the council agenda.

>> Mayor Reed: Well, I just want to make sure that we don't confuse ourselves about when we're having the open forum, because I think you have it listed twice on some meeting days you would need to have it twice. And some days only once.

>> City Attorney Doyle: Right.

>> Mayor Reed: The way the language is changed makes it look like you're only going to have it in the evening meetings.

>> City Attorney Doyle: No, yeah, and the intent -- I understand what you're saying, so we can clarify to make sure that it shows up -- if there's an afternoon and evening session, it shows up twice. If there's just an afternoon session, it just shows up at the end of the afternoon session.

>> Councilmember Oliverio: Mr. City Attorney, does the chair, the Mayor, have the opportunity to open, open form a second time?

>> City Attorney Doyle: Does he have the opportunity to do that? I think it's best to have it on the agenda.

>> Mayor Reed: We have had that in the past, I know, continued the open forum until the evening. We're not trying to change the way we do that on the agenda and I don't want people to get concerned or confused. Other than that I think it's fine. And we have a motion to approve the resolution, send it on. And Martha O'Connell, did you want to speak on that one? Open forum -- okay, that's next time. All right. On this motion all in favor, opposed, none opposed, that's approved. Item G-4. It is a memorandum from councilmembers Liccardo, Herrera and Oliverio regarding the -- adding a request to consider the municipal code changes, provide revocation and injunctive relief for nonpayment of city taxes or fees. I think that session is October 9 is when we'll look at those priorities. Either -- anybody want to speak to that memo? Councilmember Oliverio.

>> Councilmember Oliverio: Yes, mayor I'd just make a motion to move this memo. The larger discussion will occur at the council meeting between now and then. The City Attorney can weigh in by October 9th to tell us what are the legal opportunities. I know some members of the medical cannabis community offered suggestions and/or disagreement or legal alternatives, and I'm sure the City Attorney will take those both into account, since they are part of the public record, and make a final recommendation we can take on October 9th.

>> Mayor Reed: We also have a memorandum from Councilmember Rocha with a related recommendation on the medical marijuana collectives to consider in the prioritization session. I think it's a different question, but we should take that up after we vote on this one as a separate referral. So on the memorandum from Liccardo, Herrera and Oliverio, motion is to send it to the priority setting meeting discussion. All in favor --

>> Councilmember Oliverio: Mayor, is there any comments?

>> Mayor Reed: Yes, I'm sorry. Martha O'Connell. Finally got the right place for you.

>> Okay, just for the record I'll repeat what I said. I'm speaking in favor of the Liccardo, Oliverio, Herrera memo and in support of the new memo from councilperson Rocha. I was born in Berkeley California. We then moved to Santa Cruz, where I went to high school, and I have seen enough used hypodermic needles, marijuana paraphernalia, and stoned people laying in parking lots, and loitering on the streets to last me a lifetime. I know that when you guys approve this type of establishment, that part of the concern was that this was a good way to raise money. Well, I am -- it is bad enough to have these places here in San José. And now I find out that of the 80 establishments that aren't paying taxes, 45 of them are still in operation. And quality of life, councilperson Rocha, yes, indeed. They just opened a new one next to the Indian market where I shop, which is a few feet down from a family restaurant. And I'm sick and tired of wading my way through a bunch of stoned people to do my grocery shopping. So I urge you to do all you can to call these establishments into compliance with the law and hopefully having to pay taxes will drive some of them out of the city.

>> Mayor Reed: David Wall.

>> My commentary deals with the fairness in taxes. We see that council routinely, especially the authors of the bill, waive fees and taxes for developers, for car parks, for traffic mitigation. And for giving special considerations by waiving taxes and what have you for high density living projects. So when the issue of fairness and taxes come, it should be fairness across the board for everybody, and not giving developers a break because of political agendas by the council or what have you. And I think that should be an issue to talk about whenever you decide to levy taxes on anybody. It should be fair and equitable for anyone.

>> Mayor Reed: Doug Klopek.

>> Hello, mayor and councilmembers. I wanted to speak today on behalf of med Mar healing center and some of the tax compliant collectives that do operate in the City of San José that do pay all of their state and city taxes. It does put the operators of this fair operating market at an unfair disadvantage when there are those who are able to still operate without some sort of enforcement action. So we're very pleased to be in support of Sam Liccardo's memo and we hope that this will allow the city to, whether it's changing municipal code or giving the proper tools to accurately enforce the lack of tax compliancy with the large numbers that are operating. I just received a few moments -- right before we came a memo, brief statement from one of the local attorneys who asked me to read this on his behalf for attorney James Anthony. It said: I represent a coalition of responsible, tax paying medical cannabis collectives long active in engaging in city civic life, leaders of the referendum and supporters of the city tax. We support this enforcement recommendation provided that due process and notice and hearings are provided. We especially support amending the marijuana business tax ordinance to provide strict enforcement including closure for failure to pay. It is unfair for my clients to pay a 7% gross tax while their competitors flaunt it. As many have done for 18 months with no consequences. We look forward to supporting your enforcement efforts and adding more tools to the City's enforcement tool box. Thank you, James Anthony. Again we are in support and hope you are able to pass this and get full action support to get some action. Thank you.

>> Mayor Reed: Dave Hodges.

>> Hello, mayor and councilmembers. You all know who I am at this point. I am one of the collectives that is not paying the measure U tax. I sent an e-mail out early this morning, explaining our stance on it. One of the things that I do want be to bring to your attention, and I do actually agree, that modification of the tax should be made, is the current tax narrowly defines the activities that we're doing. In the case of a sale, or an exchange, these are activities that the board of equalization violate a true collective. This is a case I have ongoing with them that as the law goes will pan out over the next two years. But they have come to the determination that a true collective does not sell cannabis. This puts me in a really awkward position where the language inside Measure U currently doesn't allow the taxing of contributions, which is the only activity that we define that we do. Unfortunately, the law is so gray that you know, it's one of those things that will have to be tested in court. But if you'll review the e-mail that I sent, there are some large advantages to the city to modifying measure U and incorporating the language such as contribution and donation, as things that are qualified as gross receipts and taxed. Thank you.

>> Mayor Reed: That concludes the public testimony. We have a motion on one of the memoranda. All in favor, opposed, none opposed, that's approved. Now let's take up Councilmember Rocha's memorandum regarding another enforcement from another angle. Councilmember Rocha do you want to speak to your memo?

>> Councilmember Rocha: Thank you, mayor. Rules Committee members. For me, the bottom line has just been the proliferation, I'll just use that word. We're going the wrong direction in my mind in terms of how many collectives are operating in San José. Initially when the council had the discussion we had thrown around numbers anywhere from ten to 20 to 30 to 50, we're now going the other direction. I'll make it clear that I support medicinal marijuana. What I don't support is the impact it's having on the community and the response I'm giving those community members which is, there's nothing I can do. I feel there is something we can do, and I'm looking to staff to provide some direction on that. That's why I was pretty general in terms of the direction for staff work, because I'd like to hear from the City Attorney and City Manager at some point what they need or what kind of direction they can provide as a tool for us to at least go the other direction and not continue to go high. I'm nervous as we sit on our hands that we might be looking at 200, 250, 300. I don't know what that threshold for us where we finally divert some resources, some attention to this because at this point waiting for the state to act or the federal government to act, I don't have any faith in that.

>> Mayor Reed: All right. Staff, I remember we've been down this -- been down all of these roads before. One time or another. In a variety of ways. And I can't remember when the council gave direction on terms of the prioritization of the enforcement, but we took some kind of action in the last year on that. And so I think staff work has probably been done in terms of the resources necessary to do enforcement as part of the budget work, I think, perhaps.

>> City Attorney Doyle: This is multi-departmental. It's police, it's code, it's my office, it's finance staff and the City Manager's staff. I think we have all that and we can collect it and come forward with it pretty quickly. I would assume this priority study session, this wouldn't be a problem to address it. It is really part and parcel, and we've talked about it in the past.

>> Mayor Reed: Right, anything to add, City Manager, in terms of their workload?

>> City Manager Figone: No, I agree. I'm looking at Laurel. I know we've had this discussion at least internally, even if all of it didn't get to council about what we would do and what we need. I think the other thing to clarify during the scoping of this, at the -- on the 9th would be to understand the distinction between what we can do from a tax you know the business license tax, it's not a license to operate and how you harmonize that with what the councilmember's saying is really the problem that we keep hearing about in the city which is proliferation. What tools do we really have?

>> City Attorney Doyle: And I would suspect that we would want clear direction from the council as to how it wants us to prioritize enforcement efforts. Because I think there's some ambivalence on the part of some staff at least as to what council wants us to do. And so I think that's -- we just need to get greater clarity.

>> Councilmember Rocha: If I may --

>> Mayor Reed: We can do that on the 9th I think is a short version of this.

>> Councilmember Rocha: And what raised me to act, this issue has been continuing and continuing, and as I've seen the numbers go in the wrong direction when I saw the direction from my colleagues which I support. The flip side of the coin for me, which I know is not the intent, is that if we legitimize even more, we now have even that many more collectives operating in the City of San José, and that is truly to me not the spirit of what this council is interested in seeing. The location and the whole issue surrounding this. And I'm just concerned we're not focusing on this this is becoming a public safety issue to me and I want to work before there is a problem.

>> Mayor Reed: Anything else, Councilmember Oliverio.

>> Councilmember Oliverio: I'd just say, you know, as you said we have gone down this road several times, and the spirit of the council has been that there has been no definitive spirit. We have been unable to have a council majority to make a decision on these items. We've been relegated by the fact that you know, there's a lot of things coming. We have a presidential election which may determine the outlook of this. We've tried to manage what we can and we could have come up with a regulatory item early, early on, which might have been the benefit but the council passed on that opportunity. Then came the complexity of them opening in are maces we might not want and then the last thing we said on the council was prioritize the closure of these facilities that are adjacent to the schools which is the state law and we have done that closed those facilities. The second was close these facilities that are the nuisance and Laurel Prevetti, the director, what is the nuisance as you define it because that is the last time the council gave direction.

>> Laurel Prevetti: Thank you, councilmember. As you accurately stated, the council did give us those priorities in terms of how to direct our limited resources for enforcement and public nuisance has a fairly high bar so we do need to do investigations on those complaints that are coming forward with public nuisance. And we work with the attorney's office to litigate as needed. We are also enforcing against complaints regarding unsafe building practices, electrical permits et cetera. So code enforcement is using the regular code enforcement tools to make sure that at least there are safe environments. But the bar for public nuisance in an era of limited city resources, to pursue those cases is quite the challenge for the city.

>> Councilmember Rocha: How many have been closed?

>> Councilmember Oliverio: And I do think it's imperative that residents in San José, as they weigh their votes for state assembly and state senate, ask those candidates, because the legislature has failed to do anything here, ask them how they're going to remedy the situation so cities can deal with this? Because we could pass something tomorrow, and next thing you know it's going to get taken out and thrown out until the State Supreme Court things are heard. But it would be much easier, and I don't think it's -- I think it's just fair to be honest with the residents of San José that the assembly and the state senate have passed on this issue because it's prickly, they don't want to touch it. But unfortunately we have to deal with it, and we've tried to deal with it in a manner, and I think obvious collecting the revenue so we can do the enforcement would be a good step. Because otherwise we're going to have, you know, a .5 FTE running around doing something that doesn't count. We need to fund that position if we want the enforcement, whichever way the council wants to go if we want to go in a new direction and define nuisance in a different way.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: How many facilities have we closed?

>> Laurel Prevetti: I believe we have closed about four or five mostly because of the distance to our schools. That has been really the best tool to make sure they comply with state law. We did issue an info memo about the status of our enforcement issues, so that is available online for those interested. Thank you.

>> Councilmember Rocha: And another tool that I talked to the City Attorney about is Sacramento the action they took on this matter in moratorium, and I wasn't prescriptive enough to suggest that that's the only avenue. But I'd really like us to take a look at any option we have whether it's established there is a certain date for those collectives to be closed or no new collectives. But regardless, they'll keep pointing the finger at who is not doing what or should be doing something, we do have some tools and we could shift resources. We're making

the decision in my opinion to not do that. I'd like us to have that discussion and if we're going to continue to not do that then so be it. I'm just one voice. I'm not going to suggest I'm right or wrong on this matter. I feel there is more we can be doing and I'm not should you we are doing.

>> Mayor Reed: The resource discussion is one we'll take up in the budget discussion, that's when we last discussed it and decided how much we could afford to spend on this versus everything else. So it is sort of a constant question, along with other things as it changes, and there's no reason as you state that we couldn't shift money from something to this, if it was a high enough priority of the council. That's really a budget discussion. But it would be a lot better if it cost a whole lot less money to do the enforcement, we could get more bang for the buck, and I think that's the whole point of looking at the tax part of this, is to try to make it easier. Because it is difficult to do that. I think our current resource allocation the estimate was it would allow us to handle prosecution of four of them at a time, roughly and each prosecution takes a lot of work. If we could do eight with the same resources that would be better.

>> City Attorney Doyle: I think we'll be able to address it more specifically. I do want to say that a number of cities in the state are filing the same battles, and we can learn from some of their mistakes and learn from some of their successes. But I think at the end of the day, Councilmember Oliverio pointed out that there's such uncertainty in the law still that we're sort of going to have to be working this through over the next few years ago, I think.

>> Mayor Reed: And I have talked to both the U.S. attorney Melinda Haig and District Attorney Jeff Rosen about their enforcement actions, and they do continue to bring enforcement actions, although they are not just doing it on nuisance basis, they usually have other factors, other things that are going on around them which they bring their enforcement actions. But I know that there is several underway. I talked to Jeff Rosen this morning, as a matter of fact, and some of those in which they are bringing the enforcement actions have closed down, but the enforcement action continues on. So we do have some prospects of getting help from other agencies but I think we're pretty much on our own. Vice Mayor.

>> Vice Mayor Nguyen: Just a clarification question, mayor. On October 9th, since this is the council prioritization session, can we actually take votes and make decisions based on all the issues that come forward?

>> City Attorney Doyle: I think the idea was to set the agenda, and the Rules Committee makes the ultimate decision so that the council will have that ability to, but that would be the committee's call.

>> Mayor Reed: Well, typically it's worked in the past. We say what the priorities are, and then the staff still has to do all the work to bring it back in a form that we can then vote on the specification question. But it's a question of what do they work on first, second and third? I don't know how many things are still on the list from the last time we set the priorities. Some of those have been handled. But in this case, it would be whether or not the additional work on enforcement actions and the re-prioritization of the enforcement is something that we want to take on, which I think is a separate question of do we want to take on the tax issue. And we would just deal with it. So if we decide that's high enough priority, we'll do that instead of one of the other candidates for the top 10. But I think we can certainly deal with it on the 9th, and I don't think it will take a lot of work, staff work between here and the 9th to prepare the stuff that Councilmember Rocha has asked for.

>> Vice Mayor Nguyen: And if some of these items make it into like, say, the top 5 list, that would come back to the council in a timely manner, we're not setting another date where we're hearing the top 5 issues that we're concerned with, right?

>> Mayor Reed: Right. Well, the timeliness is the question, because we have some already on the list, we're talking about adding some to the list, and I don't know how many that is to add to the list.

>> City Attorney Doyle: I think really the short answer is, if it's something like the sign ordinance, it takes a long time to come back, even though it's a priority. If it's something easier -- this may come piecemeal. The tax ordinance may be the easiest. Looking at enforcements efforts, and it's a resource issue, those things we can talk about on the 9th.

>> Mayor Reed: Okay. We need a motion on this one.

>> Vice Mayor Nguyen: Motion to approve.

>> Councilmember Oliverio: Second.

>> Mayor Reed: Motion is to refer this to the night meeting. All in favor, opposed, none opposed, that's approved. 5 is direct staff to draft amendment to title 9 of the San José Municipal Code, this is a memorandum from Councilmember Kalra and Chu. Councilmember Kalra do you want to speak to the memo?

>> Councilmember Kalra: Thank you, mayor. And you know, I appreciate the previous discussion and agree with the sentiment of both the memos in the discussion, and we can now go from one form of smoke to another.

>> Mayor Reed: Seems like most smoke is bad.

>> Councilmember Kalra: Yes, and particularly wood-burning smoke, it's actually the worst kind, because the particulate matter is actually large, but it's too small for our normal, you know, for the nasal and other you know kind of respiratory systems to block it from getting into your lungs. However, it's much larger than other types of pollutants in the air that come from vehicles or from manufacturing and what have you. This is why it's a very dangerous type of pollution in the air and that's why I'm bringing this forward and as you can see in the memo the request is to have it placed on the upcoming priority-setting study session. And the -- in addition to having this matter looked at in the study session or in support of that, I'd like to first of all point out the letter from breathe California, Terry Trumbull, who was here earlier dropped that off, and of course there's also a letter from Bay Area air quality management district, of which I'm the vice chair currently, and we do have a representative who will be speaking in a moment in support of us going forward with this item, that's John Marvin with the air district. I wanted to bring that up in addition to other items I brought up over the last couple of years. I always look to collaborate and use resources of other agencies. The air district has been extraordinarily valuable in terms of getting these types of ordinances in place in many jurisdictions. There's close to 40 jurisdictions in the Bay Area

that includes county and city jurisdictions that have these types of regulations. We have some of them, but we don't have all of them, and I think that we can improve upon it. And if we can do so by using as little city resources as possible, I think this is an opportunity to do so. Thank you.

>> Mayor Reed: I have some requests to speak on this. Councilmember Oliverio.

>> Councilmember Oliverio: Councilmember Kalra, so BAAQMD will pay for staff time to do the ordinance?

>> Councilmember Kalra: Well, that's something that we'll determine going forward, like what kind of assistance they can give. And just similar to the secondhand smoke ordinance, the payday lending ordinance, where we found some agencies were able to pitch in for certain aspects of it. That's something that we can determine, and I'm sure that staff -- we have a very good working relationship, the staff does, with the air district, so I think we can get a good sense of what the air district can provide in terms of staff support at some point. We have to have our lawyers look at it no matter what but if the analysis is already done if the language is already done if we have examples of what other jurisdictions have done through air districts support and we have Mr. Marvin here maybe he'll just speak to that then at least we'll have a better sense. Right now I can't say exactly how much percentage in terms of cost and things like that.

>> Councilmember Oliverio: And Councilmember Kalra if I understand if you have a of an existing fireplace in a single family home and it's gas this proposal would not allow you to convert it to wood burning, you could only keep it gas?

>> Councilmember Kalra: That's right.

>> Councilmember Oliverio: Thank you.

>> Mayor Reed: I think it would be important to know, on the 9th, as we're weighing the priorities, how much help we can get from others affects people's perception of how much we should put into it, and where it might be on the priority list. So the more we somewhere of that on the 9th I think the better.

>> Councilmember Kalra: Thank you.

>> Mayor Reed: Let's do take that testimony, John Marvin first.

>> Good afternoon, Mayor Reed and --

>> Mayor Reed: If you squeeze the handle it will slide up and you won't have to bend over.

>> Got it. Thank you, Mayor Reed and members of the council. I'm John Marvin with the Bay Area air quality management district. I'm here in support of Councilmember Kalra and Chu's amendments to the wood burning appliances ordinance. And here to lend our support to you and the City of San José. As Councilmember Kalra explained, wood smoke, serious air pollution problem. Fine particulate matter is particularly a serious Public Health matter. And the air district has a regulation in place for the nine counties of the Bay Area. But we need more. And we're looking to local cities and counties to adopt amendments to their own wood smoke ordinances to improve and help citizens and neighbors within local communities that are disproportionately affected by wood smoke devices. In particular, and as you've heard, always on the weather, that there are many microclimates here in the Bay Area. So that local topography has a lot to do with it. We can do our utmost at the air district to help everyone in the region. But locally, there's a severe impacts due to these local topography issues. We're asking cities and counties to take a look at their ordinance in place and adopt further measures to help combat locality air pollution problems due to wood smoke. We're here to support. I'm not here to say I don't know exactly what support we can lend but we're here to lend whatever support we can, in support of Kalra's amendments.

>> Mayor Reed: I have a question here from Councilmember Oliverio.

>> Councilmember Oliverio: Question for you sir. I'm aware that you are the enforcement agency for those who are burning on the days they are not supposed to, is that correct?

>> That's correct.

>> Councilmember Oliverio: You have staff that, when called and alerted, will then visit that homeowner and let them know about what the regulation is? It's not the cities that have the capacity to actually enforce those wood burning issues?

>> Correct. In a way. But in some cities and counties, especially in these localized impact areas, we're asking for additional help which may include enforcement capabilities under cities, to combat this. Not that we're asking the City of San José that. But we only have 60 or so inspectors.

>> Councilmember Oliverio: That's a lot more than we have.

>> But we're dealing with 7 million residents here in the Bay Area. So if you look at it in that perspective, there's not many of us. And they're out patrolling. Whenever winter time spare the air event is in place. But we can't be there and catch everyone.

>> Mayor Reed: Okay, any other questions? All right. I have one more request to speak, Mr. Wall.

>> I have learned to tread very lightly when I'm in the presence of learned council. And I support him moving forward. I just have a couple of comments that need to be integrated into the discussion. One, people with no other way to heat their homes with a fireplace or wood burning stove. Also, there's no discussion in here about cap and trade, and those affects on heating homes that will take place in fiscal year 2015. Those are significant taxes on the fuel sector. And from my own farming point of view, I make the best smoked salmon, you can't even find as good a smoked salmon that I make on the market. So when I hear talk about people dying you know of wood smoke, when I'm smoking salmon, I think that they should just do their affirmative duty and decrease the

surface population. But I don't smoke my salmon during air -- spare-the-air days. So I think I'm just under the guideline here that I can smoke salmon and give it to gifts of learned councilmembers, and other people in this room from the heart not for anything else. But please support learned council, Councilmember Kalra's request. Thank you.

>> Mayor Reed: Anything else, Councilmember Kalra.

>> Councilmember Kalra: I guess that will be responsibly smoke salmon, then, since he's not doing it during the spare the air. I would say in response to one of the comments made by Mr. Wall is that there's an exemption if the only source of heat you have is a wood burning stove, that's one of the exemptions that exist. Obviously, you don't want to get cold, if that's the only way they can heat their homes, but otherwise I would appreciate the support, thank you.

>> Mayor Reed: The request is to put it on the October 9th council priority study session agenda.

>> Vice Mayor Nguyen: Motion.

>> Councilmember Oliverio: Second.

>> Mayor Reed: All in favor, opposed, none opposed, that's approved. Next is a request for a designation as a special event for meadow fair neighborhood cleanup. We have a motion, all in favor, opposed, none opposed, that's approved. That's our agenda exempt for the open forum, Mr. Wall.

>> As you know I write memos from time to time, some of which inadvertently chafe some people's hides. I want to focus on performance issues, specifically Mr. Mayor. I would like to see a performance measure at the environmental services department that engine number 1 be fully operational by December. As a Christmas present to the council, so to speak. So at least you'd have enough power to get through the wet weather flows. And I think it's reasonable, as far as my own personal opinion, of how that operation works, that engine

number 1 be a performance target. And if it's not met, then there should be swift and severe consequences to those people in positions of responsibility of the environmental services department operations. Thank you.

>> Mayor Reed: That concludes the open forum, concludes our meeting, we're adjourned.