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City of San José Rules and Open Government committee meeting. Wednesday, July 29th, 2009.

>> Mayor Reed: The meeting to order. This is Rules and Open Government committee reunion meeting. [Laughter]

>> Mayor Reed: July 29, 2009. Welcome everybody back. I know you missed seeing the Rules and Open Government committee meeting on television for the vast audience at home. So we're going to be here every Wednesday for quite some time. It is nice to see my council colleagues back from their vacation and not held in customs somewhere. That's good. First question is, whether or not we need to change anything on the agenda order from what we've got.

>> Lee Price: Mr. Mayor, if I might, Lee Price, City Clerk. The item bulleted under 3.2A, approve the Independent Police Auditor's year-end report, that's actually on the administrative draft for August the 11th, and you'll be reviewing that shortly, that's just an unnecessary notation. And then on the second page, item 10.1, proposed revisions to title 12 and title 2 of the Municipal Code recommended by the elections commission. That item is also on the administrative draft for August the 11th. So it's technically a moot item, if you want to just drop that and if you have any questions about that item to either Rick or myself when you get to it on the administrative draft I'm sure we will be happy to speak to it.

>> Mayor Reed: Okay. Anything else on the agenda order? If not, we'll just start at the beginning. We have city council agenda for this coming Tuesday, August 4th. Any changes on page 1? Page 2 or 3?

>> On page 2, item 2.4 we're going to be deferring that so that we can get the report out.

>> Mayor Reed: That is the east hills wildlife protection plan? Deferred a date?

>> August 11th.

>> Councilmember Constant: Mr. Mayor, I'll be issuing a replacement memo later in the day for 2.3. I'll no longer be missing August 11th and 12th.

>> Mayor Reed: Those are excused absences?

>> Councilmember Constant: Yes.

>> Mayor Reed: Anything else on 2 or 3? 4 or 5? 6 or 7? Page 8 or 9? 10 or 11? Item 5.2, annual trail report, we have a couple of councilmembers want to defer that for some period of time. Not yet sure when they want to take that up. This would be a chance to discuss our trails program. I don't think they're ready yet. The work's already been done, staff memo is already out. So we can do it at any time. We'll just drop that for now until we get a date that works for them. Anything else on 10 or 11? I have one request for an addition. I have a memo asking for presentation and discussion of what the State did to us here in this last budget cycle, so we can begin the process of figuring out how to deal with it. And I don't anticipate that that's a major presentation. I don't even know how you could put it in a PowerPoint. We just need to get the information to the council best -- best information we have on city and agency, and so that should be a joint item.

>> City Manager Figone: And yes, mayor, our intent is a verbal report. If we have briefing notes to accompany them, that's fine. Otherwise we can follow up with an info memo.

>> Mayor Reed: That's fine. Any other requests for additions?

>> Councilmember Constant: Motion to approve as amended.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion is to approve as amended. All in favor? [ayes]

>> Mayor Reed: Opposed, none opposed, so we'll go to August 11th, council agenda. Anything on page 1 that we need to change? Page 2 or 3? Page 4 or 5? Page 6 or 7? Just like to note that we are having an evening session on the 11th, instead of the 4th. 4th is National Night Out. And so we'll have evening hearing items on the 11th, and we'll have some of those on this agenda. Anything else on 6 or 7? Or 8 or 9? I had one question about 11.5, that's the interim ordinance on the moratorium on new bail bonds establishments. I think we've already had that policy discussion debate argument and this is the ordinance, just --

>> City Attorney Doyle: The policy discussion was whether or not to direct staff to either come back with an ordinance or not. This is the actual ordinance.

>> Mayor Reed: Okay. So I'm hoping that won'ting a long discussion since it's implementing previous direction. Request for additions, I have several written, commendation McKinley teen center, YMCA east valley adventure camp, the oath of office for youth commissioners, district 1, 4 and 7, travel requests by the City Clerk for some continuing education and training. Any other additions? Any requests here? No?

>> Councilmember Constant: Motion to approve.

>> Mayor Reed: Motion is to approve.

>> Councilmember Pyle: Second.

>> Mayor Reed: All in favor? [ayes]
>> Mayor Reed: Opposed? None opposed, that's approved. Takes us to the redevelopment agency agenda for August 4th. Seems like there isn't any.
>> Mr. Mayor, we posted a cancellation, all the items are moved to the 11th.
>> Mayor Reed: August 11th administrative draft. Any changes on page 1? Page 2 or 3? 4 or 5?
>> No changes, no other additions.
>> Councilmember Pyle: Move to approve.
>> Second.
>> Mayor Reed: Motion is to approve. All in favor? Ayes.
>> Mayor Reed: Opposed, none opposed, those are approved. Legislative update, Betsy Shotwell is there with the latest bad news from Sacramento. You can expect bad news from Sacramento and I'm rarely disappointed.
>> Betsy Shotwell: Oh, I'm sorry. Mr. Chair, Betsy Shotwell, director of intergovernmental relations. Unable to raise this. If I could ask this item be just delayed slightly? Our lobbyist is en route to give us a brief update.
>> Mayor Reed: Okay, we'll come back to it. We have nothing on meeting schedules. Public record, anything the committee wishes to pull out of the public record for discussion?
>> Councilmember Constant: Mr. Mayor, I have a question for the City Attorney regarding item P and V, P-Paul and V-Victor, on the educational branch, Park Branch Library. Rick, can you explain to us what the process for reconsideration is and how that works?
>> City Attorney Doyle: The council can reconsider an item only on two occasions: One, at the meeting where the action took place, or the next meeting immediately following. With respect to this item, there are two -- the last chance is the August 4th meeting. It is a matter that only -- while the Rules Committee can put an agenda item on, only a member of the prevailing side can actually make the motion. So if the council is to reconsider it, the six members, I believe it was six, that made the -- one of the six could make a motion to reconsider, and then the council could -- anybody can second it, and then the council can take a vote. Those are sort of the requirements in a nutshell.
>> Councilmember Constant: I guess that's what I was getting at, is technically how we get there to find out if there is a member of the prevailing side who wishes to reconsider, since they are not all partly of this committee. So my request would be, is that we do put it on the agenda to see -- and give the opportunity if one of the members from the prevailing side wishes it to be reheard. Since that is the only opportunity we will have to have this reconsidered.
>> Mayor Reed: Councilmember Pyle.
>> Councilmember Pyle: Yeah, I would like to speak to that, thank you for bringing that up. I question how much we're going to gain by doing that for these reasons. If you recall, the evening of June 23rd, there was a lot of questioning, there was a lot of concerns, about the bid itself. But the bid -- the council did have the authority and the right to reject all bids. We did not dismiss Barry Swenson's bid just out of hand. We never intended, at this point, to wait for the entire month of June for anything to happen. But it's understandable in that there's been some language changes, and there have been vacation schedules, that needed to be taken care of within Public Works. First of all, what would be the end result if it did go back to the council? First of all, the vote may not be called, which would further delay the project. Katy Allen has removed the three-year reference. It is gone. Although I still have some concerns about that. That would expedite the whole situation. Some of those changes, I'm as I said still concerned about. I think there's a lot of work that we need to do in a broad-scope manner, but as far as this whole process, it will be less delayed if we let it proceed with the open bids. I've been assured by Katy that the bids and their numbers have all been open to the public, easy for everyone to see that the new bids should be equally competitive since the construction climate is still the same. The project will be sent out to be rebid within one week. The reissue of the bid took time, because they were incorporating amendments, as they earlier mentioned. So the open bids begin August 27th, comes back to council in October, and then the construction should be complete by July or August of 2011, depending upon the construction schedule and possible delays. So in the new bid, Public Works will be clarifying the bid specs to remove the three years of experience requirement. And Barry Swenson builders relied upon staff recommendations to carry the bid, had full knowledge of the concerns being raised and the staff responses. There were lots of questions that were raised. The whole process needed to be further clarified, and that is what will be allowed, if we proceed with the new time line and those changes.

>> Councilmember Constant: Well, I think there's no doubt that the birds will be more competitive since everybody has the chance to see what was previously a sealed bid. But in regards to just procedurally, if we don't put it on the agenda and it is not on the agenda at all, is a member of the prevailing side able to bring it up at the meeting on the 4th or do we need to put a place holder in the event that that would occur, knowing that we don't have the power, since three of us weren't on the prevailing side, we can't make that request right now? But at least having a place holder so it's available and the public's aware if there is a chance if one of those members wanted to have it reconsidered?

>> City Attorney Doyle: What we're trying to do here is you need to satisfy both the Brown Act requirements and then the motion, Robert's rules, motion for reconsideration, in order for a motion to be made as you know under Brown Act, for Brown Act purposes you need to have something on the agenda. So if that's the decision then you need to have it agendized. But if you don't want the matter reconsidered then staff is going to proceed with rebidding the project.

>> Councilmember Constant: Well, I would ask that my colleagues allow this to be as a place holder on the agenda so we can comply with the Brown Act and give the opportunity for one of the members on the prevailing side if they so choose to ask for reconsideration. I think that's the courteous thing for us to do. Can.

>> Mayor Reed: I questioned Rick on the process. If we did nothing under orders of the day, couldn't the councilmembers say, I want to move to reconsider this item? And if there's a second, then we have a motion to reconsider to be voted on. The real question would be, when would you have the substantive discussion of that, and do you need to kick it to the next meeting, the 11th, in order to have enough Brown Act notice to comply with the Brown Act?

>> City Attorney Doyle: Yeah, and I think the problem is both a procedural issue of making a motion for reconsideration and a vote on a motion for reconsideration would also require Brown Act noticing. The second question as to whether or not you have -- when you can hear it, your own rules address that and it says once the council's voted to reconsider you can either take it up immediately or you can defer it to a later date. So you have the discretion right there. But from a procedural standpoint, that's when you reconcile the Brown Act from Robert's rules, and there needs to be something on the agenda to give the public notice that there is a possibility of a motion for reconsideration. Otherwise the public doesn't know that somebody may make a motion for reconsideration at the meeting.

>> Mayor Reed: But isn't that always the case under our rules that says you can reconsider it during that meeting or at the very next meeting?

>> City Attorney Doyle: But the item has been agendized at that meeting.

>> Mayor Reed: What about the very next meeting?

>> City Attorney Doyle: Again the process we have always followed is that it needs to be placed on the agenda to at least let the public know there is a motion for reconsideration.

>> Mayor Reed: Put that on your list of things we need to clarify in our operating rules.

>> City Attorney Doyle: The good news is, we don't do this every day.

>> Councilmember Constant: I don't think there's a harm in putting a place holder therefore allowing one of the opposite side to exercise their right of reconsideration. If we don't then we're prohibiting them from doing that which I don't think is good policy.

>> Mayor Reed: Okay, I have some cards and requests to speak on this, anything from the committee members before we take up the vote?

>> Councilmember Pyle: Mr. Mayor, I just have a clarifying question from Katy Allen, if I might. Katy, you have the authority to exercise the three-year -- or remove the three-year provision; is that correct? Would that then put Mr. Swenson in the position of being able to go ahead? In other words, do you have to go out for rebid since that would be removed and then in that case, the questions would be answered.

>> Katy Allen: The three-year requirement that was in the bids that were advertised that went to council on June 23rd, that had a requirement that we would have -- in order to award that bid we would have to comply with the way that bid was advertised. So to answer your question, yes. The clarifying language that we're putting into the rebid makes it very clear that the three-year experience requirement is not additive to the experience required for a license.

>> Councilmember Pyle: Right. And I did get your figures correct in reference to the time line or did you wish to speak to that?

>> Katy Allen: Just a little bit. In order to put out our bid to the public and everybody have a chance to read it, we were going to have it in the clerk's office this Friday, two days from today and go public with the bid on August 5th. We could continue on that track and then if council would reconsider it on the 4th,

we'd pull back depending what they decided the 4th. All in all, you discussed it from that point forward, it was very clear. Yes, we would be coming back to the council after the bidding process, in early October, with an award if we stand on a course that council directed us to the end of June.

>> Councilmember Pyle: Thank you, Katy.

>> Mayor Reed: But there is only one way -- you have two choices. One is to reconsider it and award the bid, or rebid it.

>> Katy Allen: That's correct.

>> Mayor Reed: Those are the two choices.

>> Katy Allen: Right. And Mayor, the bid that was before council on June 23rd, it has expired. It is our practice, and very consistent, that a contractor can say I agree to extend my bid and there's every reason to believe that that would be the case with Swenson builders that they would agree to honor their price that they had originally bid.

>> Mayor Reed: Okay. Anything else before I take some testimony here? Okay, I have a few people to speak. First is Pat Saucedo.

>> Mr. Chair and councilmembers, appreciate the opportunity.

>> Mayor Reed: Get a little closer to the mic Pat.

>> I am here on behalf of the chamber of commerce. There are short people in the world. [Laughter]

>> But mighty. I am here to request that the construction contract for Ed Park library is placed on the agenda for reconsideration. As we're hearing today in your own discussion, the Brown Act requires that this be noticed if, in fact, there's going to be any discussion of a reconsideration. Otherwise it would have to be put off another week to be noticed that you were even going to have that discussion. Also, hearing from Ms. Allen, it appears that should there be no reconsideration, the Public Works department will proceed on August 5th to go to rebid. However, we will then have lost that opportunity to have some additional conversation. But I would say, with full respect to Councilwoman Pyle, we're looking at one day, one day. There really will be no time lost to allow this to be potentially reconsidered, if one of the prevailing councilmembers would choose to put that motion on the table, it were seconded and it were supported. I think there was a lot of discussion on June 23rd, there were many questions, there was a lot of dialogue. It also, and I have been there, was the last council meeting before everybody went on vacation and I think the agenda itself was like 40-San José pages. So this is very important. It's a project that could go forward, there was a lot of discussion and I think after a 30-day vacation, allowing some final discussion is an appropriate thing to put on the agenda to see if council would like to clarify any other issues and the opportunity to take an additional action, should they so choose. So we would like to see this agendaed.

>> Mayor Reed: Ed Reyes.

>> Councilmembers, mayor, I represent Ironworkers Local 377. And I believe it's bad policy to lower the standards for these bid processes. Instead of upholding the standards that have been in place for years and years, I believe it's bad policy to lower the standards purposely. It puts the public safety at harm, and it's not good policy. The vote was -- the bid was thrown out to be rebid because there was a heavy cloud over the bid itself. And the qualifications of certain parties. If it needs to be discussed that's fine. But it shouldn't just be awarded as-is. Thank you.

>> Mayor Reed: Dennis Meekan.

>> Councilmembers, mayor, my name is Dennis Meekan. I'm representing ironworkers local 377 and I support this project be put out for rebid. As the city council voted. I think it's important that local contractors are used, two-thirds of the contractors that Barry Swenson has listed are not local and this is going to affect our local workers. Thank you.

>> Mayor Reed: Bob Brownstein.

>> Bob Brownstein: Mayor Reed and members of the committee, the intent of Robert's rules in situations like this is very clear. Items are not to be reconsidered unless there is an initiative taken by somebody who was on the prevailing side. Now, in this case, a member of the council was on the prevailing side could appear before this committee and request that the item be agendaed, or a member who was on the prevailing side who was on this committee could request that the item be agendaed. But otherwise we open up a situation in which any minority that has a majority of votes on the Rules Committee can require every single item that they lost on at a council meeting to be brought back to give the majority the opportunity which it does not want to have to -- the opportunity to reconsider and potentially vote again on an issue. I assure you, everybody who loses an item at the city council feels bad about it. Everybody would like to get another bite of the apple. The reason Robert's Rules is so clear on this issue is that we

should not cater to those desires for endless efforts to get another chance. It will interfere with the smooth working of the city. Unless somebody who is on the prevailing side says, "I actually want the chance to reconsider," this should not have a space on the agenda again. Thank you.

>> Mayor Reed: Neil Struthers.

>> Yes, Neil Struthers, building trades council. I wanted to echo what Bob said but I would ask a rhetorical question, which is how often has this happened where the losing side has then reagendized it? We all know that councilmembers know that this meeting is when you get things on the agenda. And if they wanted to revisit this, which they have not asked anyone to reconsider this, I don't know why you would want to put it on there. I would say technically maybe that's how you go about it but maybe that's out of order. Additionally, this is the first time hearing that the project is not even out to bid yet. At the council meeting a month ago, there was direction by the council to put this out to bid, and staff's response, and other people on the council said it's going to delay the project. Well, a month has gone by and there is nothing on the street. I asked the question as to why, is this because they want to reconsider this? I would say this is not proper policy either. There has been no information provided open the issue. The council debated on this over an hour. Yes, there was a split decision but the prevailing party has not come before this body and asked to reconsider. I don't know -- understand why you would put it on the agenda. Additionally, the only new information that has come out is more research into the subcontractor in question in which they appear to, once again, falsify information around their bid. And I can provide this to all of you, and I'm not going to repeat it all here because my time is limited. But the only new information that has come out since this was heard is more information and questions about the contractor in question. So I would urge you not to put this back on the agenda. As Bob stated, this opens up a process in which anyone who loses on any given Tuesday could bring it back the following week by having the majority of the Rules Committee decide they want to hear it again. Thank you.

>> Mayor Reed: David givens.

>> My name is David givens. I represent Barry Swenson builder here today. I want to ask that again this be put on the agenda. This has been a difficult month, most councilmembers have been away and have not necessarily weighed in on this. So there's several that are not here today and not represented, that I don't know what their answer would be, but I would like them to have the opportunity to see that this gets reagendized, so I appreciate your reconsideration. Thanks.

>> Mayor Reed: Daniel Prince.

>> Dan Prince, I represent Ironworkers Local 377. I think the original decision of the city council was fair and also reflected that they were willing to follow consistent operation of the public contracts code and you know, have even treatment of all people who were bidding on this project. I think given the economic situation it is extremely important that anyone who bids on public works projects or projects in which taxpayer money is involved know, are very aware of the consistent -- that there should be a consistent application of all the specifications and criteria that are expected of each contractor. I think there was a reasonable exploration of all the issues, and I don't see any reason why this city council should go back on them. Thank you.

>> Mayor Reed: Ira Harris.

>> Good afternoon, Mr. Mayor, members of the council, staff. My name is Ira Harris, and I'm counsel for Barry Swenson Builder. There's been comment about Robert's Rules of Order, and they are entirely appropriate in this substance. But they do not govern the Brown Act. They are interpreted in relation to the Brown Act. And for the Brown Act opportunity that the City Attorney has just expressed to you, to give the applicant two opportunities, or the council two opportunities, to revisit the issue, either at the hearing on June 23rd, or at the next council meeting, which is August 4th, you have to have it agendized, be presented that opportunity. So we're asking simply for a simple matter of due process. Get it agendized.

Given the vacations that councilmembers somewhere been on and that Swenson people have been on, it's difficult to allow that process to take place, for that second opportunity to be a realistic rather than an illusory opportunity. And so we'd ask simply that you place a time for this matter to be reheard, if in fact one of the councilmembers on the prevailing side basically change their vote and say, we want to revisit it. One of the things that was not visited, if you read the record, was the rejection of all bids opportunity. That was not on the agenda. There was no discussion about that agenda. And no consideration of the prejudice that that would created. We ask that you give Swenson the opportunity to present those facts at the next hearing, thank you.

>> Mayor Reed: Rick Solis.

>> Good afternoon, mayor and city council. First of all I'd like to thank the city council members for, at the June 23rd meeting, for making the right decision on this matter. But I'd like to respond to some of the comments first of all that Pat Dando and Barry Swenson had made to you in letters mayor Chuck Reed. First of all Barry Swenson makes the assumption that the decision was made because he isn't a union contractor. When in all actuality, this protest had nothing to do with being union or not union, just simply was the fact that he had a subcontractor that didn't qualify. Also, Barry also stated that he felt the decision -- I'm sorry, there were comments made by Pat Dando, one being that Barry Swenson hires local workers. All you have to do is look at his subcontractor list for this project and you would see that at least two-thirds of the subcontractors that he has are from out of Santa Clara County going as far as Manteca and Sacramento. Many of whom are notorious for not paying prevailing wages to their workers.

Therefore explains a little bit on how he came almost \$14,000 below the bid before the City's estimate. Another accusation was the decision that would cost the city more time and money. As you already know, the numbers are already out there, everybody knows where their numbers have to be so most likely will come in with a lower bid. I ask you, urge you guys to please not put this back on your agenda. Thank you for your time.

>> Mayor Reed: Josué Garcia. That's the last card I have. If anybody else wants to speak please let me know.

>> Good afternoon, mayor and city councilmembers, board members. Thank you for giving me the opportunity. I will not repeat what has been said, but I will urge you to please just continue with the new proposed bidding out the project, the library. And I do want to add that this is a particular issue, you're talking about saving money, and I'm going to be talking about saving lives actually. That contractor in question is not qualified. Right now you will save money but in case of a catastrophe, I'm sure the building is in jeopardy, it can be more costly and timely as well, so that 13, 14,000 that you may be savoring now it can come back and be more expensive for all of us. Again, this is the a library. I'm sure a lot of children and older people are going to be attending and it can be very unsafe. And just -- and that is why you have the qualifications that contractors have to be licensed and have experience on these projects. But if you take out that qualification -- that requirement from bids, you know, everybody is going to bid on your projects whether they have experience or not. And believe me. To do this type of work, especially structural steel you have to be knowledgeable about what you are doing, otherwise it can be very dangerous to have a library again with kids or older people. Thank you very much for your time.

>> Mayor Reed: Thank you, Danny Garza.

>> Danny Garza. Thank you for listening to me here today, Mr. Mayor, councilmembers. You've heard what the administrators of my union have to say. Let me just express to you what I know, what I feel, what my other fellow unemployed ironworkers have to say. As well as the other union employees that are out of work. Right now, in San José, and our subhall, there's over 100 adjournmen out of work. This job in the future will put every one of us to work. Now, the electrician, the plumbers, they need more men on those jobs than we put on those jobs. If that's going to put us to work, what's it going to do for them? What's it going to go for our economy, what's it going to do for our taxes? Thank you.

>> Mayor Reed: Thank you. Anybody else? Okay, that concludes the public testimony on this. I had a couple of thoughts. First is, if this goes on the agenda, I wouldn't want to have the substantive debate unless somebody wants to reconsider it. And so one question is, if we put something -- a place holder on the agenda, do we then have to go through haul this again, about the question of whether or not somebody wants to reconsider it? If nobody wants to reconsider it, I haven't had a chance to poll the council. I can't poll the council. I don't know what councilmembers might want to do, but I'm reluctant to deny councilmembers the opportunity to do something that our rules say they should be able to do.

>> City Attorney Doyle: Mr. Mayor, the -- as I had envisioned that you would call for a motion, and if nobody on the prevailing side spoke up to make a motion, the matter would die. Let me comment, though.

I heard something today that I heard for the first time, that raises another legal issue. And that is the bid has expired. There is a process that allows the bid to be extended prior to expiration. I don't know, when we've never had a situation where once the bid has expired, a person then can resurrect the bid. It raises another legal issue that unfortunately we don't have an answer to because we just -- we've heard about it and haven't had had the chance to do the research. But it raises a are serious concern as to whether or not that is even valid at this time. The contractor had the opportunity to extend the bid prior to expiration and that didn't happen.

>> Mayor Reed: Well, let me just say that whatever the council decides to do on August 4th, that it would be my inclination that the substantive be done on August the 11th. So if anybody who is interested

has a chance to participate in it. Although my guess is council is not likely to change the previous vote. Councilmember Constant.

>> Councilmember Constant: Well, Mr. Mayor, we heard several people testify that we'd be changing the rules, which I don't believe we would be if we did this. We have to keep in mind that the council, most of the council has not been here for the buyer month much July. In fact, many aren't even back to work yet. We had councilmembers left basically the day after the last meeting. Even if they don't want to consider they're not here to let us know. I think it's a common courtesy that we should do it to basically procedure them out of the option of reconsidering I think is wrong. And I think that we have a bid that's expired because we were on break and we didn't have that next meeting. We have councilmembers who can't necessarily be here if they want to reconsider. They haven't even had an opportunity to talk to the involved parties because they haven't been here. I think this is a little bit different than the average situation. We have to look at it in the context as if it was the meeting the next Tuesday. So I think it is extenuating circumstances and I hope that our -- my colleagues here will agree to at least put it on the calendar, on the agenda, so that the option is there if someone wants to utilize their rights. Because if we don't do and there is a member of the prevailing side that wants this considered, they cannot do it. And we, basically the four of us would be prohibiting them from doing that. That's about all I have to say.

>> Mayor Reed: Rick, if there were a motion by a councilmember at that meeting, could we specify, as the Rules committee, that if there is such a motion, that the motion itself would be heard at the following meeting? So motion to reconsider, there's a second, then what do we do? Ordinarily you would debate the motion to reconsider. But that debate --

>> City Attorney Doyle: You can always defer the vote I guess is what you're saying.

>> Mayor Reed: People need a chance to get engaged in that debate. Since we don't even know there's going to be a motion to reconsider it's pretty hard for people to get engaged and know what they're going to do. Can we specify there's a place holder and if somebody makes a motion to reconsider and there's a second that the discussion of that motion would be -- would be at a following meeting? You got to -- first you have to have the motion to reconsider, debate that and vote on that. And then you have a motion on the project. The original agenda item, right? You really have two motions.

>> City Attorney Doyle: Correct. And I think you could -- if the motion is made, the council could seek to defer the vote on the motion.

>> Mayor Reed: What about the debate on the motion, even the discussion on the motion?

>> City Attorney Doyle: Well, I think again, you can -- you can allow for debate, yes. I think the majorities of the council can do anything in that situation if a motion is made. Again, the procedure contemplates that you take the action that day. But there's nothing that limits you either your own rules or that I'm aware of in Robert's Rules that says -- it just says the motion must be made. It doesn't say that the actual vote has to take place.

>> Mayor Reed: Okay, I guess that's clear enough. Any other comments or questions?

>> Councilmember Constant: So I guess we'll see where this goes. I'm going to make a motion to agendaize this, to give somebody the opportunity to make a motion for reconsideration.

>> Mayor Reed: By agendaize this, you mean a place holder --

>> Councilmember Constant: Yes.

>> Mayor Reed: So if somebody wants to request to reconsider it they can make the request?

>> Councilmember Constant: That's correct.

>> Mayor Reed: I'll second that. Did you have comments on that?

>> Councilmember Pyle: Well, I've only been on the council for four and a half years. But I have never, ever seen a situation where, well, we didn't like the way that vote went so we're going to try it one more time. This, to me, is outside the process. We made the vote for specific, sensible reasons. This is not only outside the process but it lacks thoughtfulness, and I think in all of our quests we need to be process driven, thoughtful and careful. We answer, as a political group, and we are a political group, to the taxpayers. And the taxpayers have to be assured that we are spending their money, that 7.2 million that they put up to do this, we're spending it wisely. If I had to do it all over again, I would not vote differently. I cannot speak for my colleagues. But I have to plead with you, to understand the reasons for the vote in the first place. Thank you.

>> Councilmember Constant: Well, Councilmember Pyle, you're talking about outside the process. I beg for you to read the process. Because what I am asking for is that we have the opportunity to exercise the process that the council has adopted, that is very clearly written in Robert's Rules. So to say it's outside the process is quite outlandish because that is the process. And you said yourself you can't speak for the

other members of the prevailing side. And by not how long in on the agenda, you are preventing them from speaking if they so choose.

>> Councilmember Pyle: I'm simply saying stick with the process of having a vote and moving on.

>> Councilmember Constant: Well then we need to change the facts that we follow Robert's Rules. Because Robert's rules are the rules that we follow and this is the process. If you don't like the process I'm sorry for that but it is what the process is.

>> Mayor Reed: Anyone else? Councilmember Chirco?

>> Councilmember Chirco: I will not be supporting this motion. If one of the prevailing councilmembers wishes to reconsider the action that was taken on June 23rd, I feel that they need to bring that up on the August 4th meeting. Which then would have to be considered on the August 11th. I think that is the due process. And I will be voting according to how I believe. So I will not be supporting the motion.

>> Councilmember Constant: But they can't bring it up at the August 4th meeting. That's the whole reason we're having the discussion is they're prohibited from doing it.

>> Councilmember Chirco: City Attorney, if one of the prevailing councilmembers wishes to reconsider their vote, they may bring it up, it would be put on the agenda for the 11th, and we could have that, as the mayor said, this is a substantive discussion on August 11th.

>> City Attorney Doyle: No, the preferred process would be for a member of the prevailing side to bring it to this meeting and ask for it to be put on the agenda because they intend to make a motion at the next meeting. That hasn't happened. The concern that we have is we're trying to reconcile the Brown Act, the sunshine getting it on the agenda, the Robert's Rules requirement for motions for reconsideration and your own rules say it has to be at the meeting considered or the next meeting or which would be the August 4th meeting. Can the council waive its rules and say we can take it up? I think that's outside the purview of the council at the time. So the short answer is no, a councilmember, unless it's agendaized, cannot make that motion.

>> Councilmember Chirco: Well, I will still stick with my belief that one of the members of the prevailing - - needs to take the initiative to reconsider it. So I will not be supporting the motion.

>> Mayor Reed: Well, we have a split here, a 2-2 split. Let me suggest another alternative. Which is if a councilmember, by Friday, says they want to reconsider it by memo to the council, that it will be considered. So we got our 72-hour Brown Act notice. But unless somebody speaks up, it's not going to happen. Which is really the way it's supposed to be. But given that our rules are not clear about a councilmember's ability to ask for reconsideration, we ought to at least tell the councilmembers, look, if you want to reconsider this, here's how you do it. And that would be a place holder for a place holder. Because if -- I mean, councilmembers may or may not know what they're supposed to be doing. And since they haven't heard this discussion and the way Rick explained it is different than the way I read the rules, I agree with Judy, that if somebody, under orders of the day, says I want to reconsider something we just did last week, what am I going to do, rule them out of order? I mean, is that it, if somebody says I want to move to reconsider this, and somebody says second, then I say, well, I'm not going to recognize that motion? Because --

>> City Attorney Doyle: And again, Mr. Mayor, I respectfully disagree that -- you know, that's the problem with the public agency that is subject to sunshine requirements in the Brown Act. You have to give the public notice that there is an intent to or a possibility that a certain action may be taken and it can't just be taken without it appearing on the agenda. But we do need to clarify that in the rules and that's a conversation we can have at a later date.

>> Mayor Reed: Well can we put something conditionally on the agenda, if somebody asks for it by Friday then we could consider it on Tuesday?

>> City Attorney Doyle: The Rules Committee could direct staff because the City Clerk is -- I don't know if you get the agenda out on Friday, a direct staff, a member of the prevailing side requests for it to be put on, it can be put on. But the Rules Committee has to make that request.

>> Mayor Reed: Now, I don't want to get back on the public debate on this. We're confused enough without bringing up other issues. If the councilmember wants to submit a memo to the council, for the August 4th meeting, saying I want to reconsider this being one of the six, then we could consider it on the 4th. Now typically we would have said you have to submit that memo, under our rules, the Rules Committee rules, you would have to put that memo last week in order to get it on the agenda today to discuss. So we'd have to waive our own sort of sunshine rules to say if a councilmember submits a memo by whatever time on Friday the council will consider it on Tuesday. If they don't then nothing happens. But we also need to let the councilmembers know that's how it gets handled, because this is a new process

for them. But that would at least give the councilmembers an opportunity to say, I want to reconsider it. Without us agendizing it and making that decision.

>> City Attorney Doyle: Yeah, and the Rules Committee can do that. I mean a motion would have to be made to do that. But you do -- you can direct the clerk to put it on the agenda if that happens.

>> Councilmember Chirco: Could I make a substitute motion?

>> Mayor Reed: Yes.

>> Councilmember Chirco: Which would be --

>> Mayor Reed: The other motion --

>> City Attorney Doyle: Failed. It failed on -- we didn't actually vote.

>> Mayor Reed: You need to make a substitute motion.

>> Councilmember Chirco: Okay, which is exactly what the mayor was talking about. I'd like to make a motion that Rules says that if there is a memo put out by any of the prevailing councilmembers by Friday, that they wish to reconsider the June 23rd vote, it would be put on the agenda for August 4th.

>> Councilmember Constant: Second that.

>> Mayor Reed: And we'll get the clerk to inform the councilmembers.

>> Councilmember Chirco: Yes.

>> Councilmember Constant: And that includes the waiver of sunshine.

>> Councilmember Chirco: Yes, and waiver of sunshine.

>> Lee Price: Can we add a time on Friday? Generally speaking 3:00 is my cutoff for amended agenda.

>> Councilmember Chirco: By 3:00, prior to the motion.

>> Lee Price: By 3:00.

>> Councilmember Constant: Agreed.

>> Mayor Reed: Discussion on that? Okay, all in favor on that? Opposed? None opposed, that's what we'll do.

>> Councilmember Constant: Before we move off public record, I'd like to just refer item A to the City Clerk as part of the boards and commissions review that's been ongoing.

>> Mayor Reed: Item many A is a letter from that O'Connell regarding open forum. Anything else under the public record.

>> Councilmember Chirco: I would move to note and file the other items.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion to note and file the other items. All in favor? [ayes]

>> Mayor Reed: Opposed? None opposed, that's approved. I think we can go back to our legislative update. I thought I saw Roxann come in. Betsy Shotwell and Roxann Miller.

>> Betsy Shotwell: Thank you, Mr. Chair, members of the committee. Betsy Shotwell, Director of Intergovernmental Relations. Joining me is our lobbyist, Roxann Miller.

>> Mayor Reed: And Roxann, you guys know that on the 4th we're going to have you -- we'll do a full report to the council on the status of this on the 4th, so we don't need a complete report today.

>> Betsy Shotwell: Right, this will be just a very brief overview, and we will have more detail -- we will actually probably have more detail as well by Tuesday, which we will be going through now.

>> Mayor Reed: Well, there's two parts to what I'm looking for on the 4th. One is the detail of what the State did to us from the legislative side. The other part is our perception of how we're going to begin to process of handling it. Okay.

>> Roxann Miller: Thank you, Mr. Mayor, members of the committee. Roxann Miller from Sacramento. I will keep this brief, as you indicate. With regard to the State's budget revisions, and it's important to keep in mind these are mid year budget revisions, this is the second go-round of budgets revisions for 09-10 session, year, rather. You may recall that back in February, Sacramento was quite pleased because we had a budget for 09-10 four months early. It was not long before we recognized that we had a \$40 billion shortfall deficit and then most recently, a \$24 billion gap to fill. Literally, everything has been on the table, as you've been -- as you've been hearing, given the magnitude of our problem. The governor yesterday signed the budget. He describes it as the good, the bad and the ugly. And we certainly can subscribe to that when you look at from his perspective from legislators, there was an absolute, they believe, mandate from the voters, results of the May 19th election, to not increase taxes. Keeping that huge condition in minds, then the good was that they were able to cobble together a solution that did not include revenue increases, taxes, so to speak. But revenue -- some revenues adjustments. And it did also provide for over \$15 billion in revenue cuts. The proposal also provides, I think many will agree, some very questionable \$8 billion of solutions. Part of those solutions include, if you will, the extreme example is changing the

dollar value of delaying payment for salary for all state employees from a June 30 to July 1, where they then keyed it as about a \$700 million cost savings. With those kinds of adjustments being made, the validity of this document, folks are encouraged that we'll have a gap now, a window, one of the objectives has been to not only assure that the budget is balanced but to assure that we have adequate cash flow. Traditionally, you'll recall the early portions of the fiscal year in the State of California is when we don't have that coming in. Heavy dependence capital outlay as well as personal income tax. They're looking at now with the adoption of this budget the governor working closely with the state controller and the state treasurer to determine what are our cash flow needs immediate. Importantly how do we wean ourselves off the issuance of IOUs. Thus far for the month of July they have issued in the range of \$700 million. It could approach a billion by the time it's over. So with that all in mind, the impacts to the City of San José, and the cities specifically, the City of San Jose, as we started this discussion, local government was very vulnerable. The key components of our interaction on this budget, and the end resolve would be, first, proposition 1A and suspension. We recall a number of years ago when that was put in place approved by the voters, it was for just this kind of circumstance, if you will, to protect the interest of cities and counties in special districts. So now, there has been approved, by the governor, with the legislature, the suspension of proposition 1A. That means, for the transfer and a loan to the state General Fund of almost \$2 billion. The City of San José's share of that loan is estimated at \$20 million. Now, what is absolutely critical, and legislation companion was also passed, in an effort to assure and try to spell out, this is the first time we've done this, under the constitution to assure that the City of San José, any other county and city in the state, will be protected for having adequate cash flow during that loan period. And you may recall under the constitutional amendment, you could borrow within a ten-year period up to twice with repayment within three years, plus interest. So a companion bill was also passed. That language will provide for the securitization of revenue stream which then will assist the state. That debt will be bought in the market, hopefully, that's a big question for all of us. And then we will be assured that we hopefully don't miss a beat. Timing is so critical on this. Here we are, the end of July. The intention in working with not only the governor, the Department of Finance, the treasurer, and the controller, because the money market is going to have a lot of say on this, whether they are accepting of this notion and willing to buy. Keeping that in mind, it will be absolutely imperative that we secure the funding flow, all this mechanism is in place before the next property tax date, which is December 10th. So that is what everyone, well before that. So as I said, everyone's lawyer is looking at that companion bill. Everyone's concerned about its adequacy. So we as a city will be working and our experts directly with the key decision makers in Sacramento. That's number 1. Proposition 1A suspension. Number 2 very important as well to the City of San José, was a proposal for over two years to take, this is not a loan, but to seize and take for the state General Fund purposes, the local share of the highway users excise tax. Traditionally, constitutionally protected, arguably, unconstitutional for the state to take. But that proposal, we were successful, our efforts in the senate, of having that notion first converted to a loan and it was the middle of the night and it was crazy, crazy to be there. But ultimately, when it got over to the assembly, we were successful in stopping that proposal. So that is not part of the finished deal. The second -- so for San José, first year would have been almost \$16 million. Second year would have been \$11.5 million. Big dollars for our General Fund, for our transportation program. So at this point, that is not on the table, and we were successful there. Third piece of our vulnerability, and it's coupled very briefly with a fourth. The third piece is the catastrophic, if you will, taking of redevelopment dollars to the tune of \$2 billion over the next two-year period. The first year current year 9-10, \$1.7 billion. Second year, \$350 million. The \$350 million matches up with the court case we won in 08-09, that halted the state's ability to take from redevelopment agencies the \$350 million. It was ruled unconstitutional in our local superior court because it was a taking to fulfill what was otherwise the state's obligation to fund schools. And the constitution, section 16 of the constitution, dedicates that funding with redevelopment to be utilized for redevelopment purposes to the benefit within a redevelopment area. Interestingly enough, when we were writing 1A before it went to the voters, redevelopment was not added to that equation of safety. Because Department of Finance, everyone agreed as to the validity and the protections of Redevelopment under the current constitution. So that has served our interests well. That will be no doubt the California redevelopment agency association has indicated that they intend within the next 60 days to file suit against the State of California. So we'll no doubt watch that and be very closely involved. The last, fourth piece, which was an effort by some in Sacramento to propose the securitization of 10% of the state's redevelopment tax increment. For the purposes of funding the state's partial budget solution, and in so doing, there was, at one point, a provision that would say, if that went forward, then our exposure for a

loan under 1A, as well as HUDA would not go forward. The bill barely passed the floor of the senate. When that third bill got to the assembly, the trigger was taken off. It was simply a proposal to extend the life of redevelopment for a given period of time, if the local agency dedicates during that time period 10%. So that never saw the light of day. That was never voted on in the assembly. So we'll have more details four next week to circulate. And would like to just briefly indicate that we, at this point, the governor, Department of Finance when signing yesterday, all agree as the budget sits right now for '09-10 we can expect the beginning of 10-11 to have minimum of \$7 billion to \$8 billion shortfall. That is not taking into consideration of course 11.5% unemployment and everything else that's going on within this state. So with that, I'll be pleased to answer any questions, and Mr. Mayor, we'll be prepared for next week.

>> Mayor Reed: Okay. Questions?

>> Councilmember Pyle: You always look at me like, you know I'm ready.

>> Mayor Reed: Yes.

>> Councilmember Pyle: I'm really disappointed that they didn't go for the redevelopment proposal. I thought that made a lot of sense. That gives the redevelopment agencies more time frame to work with and help to keep more people employed and all the rest of it. Do you think that might be revived?

>> Roxann Miller: This is the second year for that proposal, but in a little bit different context. I can tell you that there is a -- within that proposal as well as our lawsuit, where we prevailed, that extension and securitization, although it would have benefited the state, it shared the same question of unconstitutionality to take those redevelopment dollars again, and have the State spend them for a different purpose. So --

>> Councilmember Pyle: Got it. And the fact that it's instituted by the redevelopment people themselves didn't make any difference, it's still the constitutionality of it.

>> Correct. There was another dynamic going on too. Within if building and as we looked to troubled waters ahead so to speak for all local agencies, the county supervisors association led by the county of Los Angeles were adamantly opposed to that proposal. As you can suspect, the suspension would have come without meeting a definition of blight which is a principal tenet to the whole existence of redevelopment agency in California. And it would have -- their severe opposition obviously was, they would like to, as soon as possible, see the redirection of the local property tax base back to them for their priority purposes.

>> Councilmember Pyle: Okay, two questions. I'm wondering who would make this loan? It must be a short list of people, who would be willing to loan the State of California whose credit rating right now is pretty dismal shape, that loan.

>> Therein lies our dilemma as well.

>> Councilmember Pyle: Whose our credit rating now?

>> Cities are still doing quite well. The state is just above junk bonds.

>> Councilmember Pyle: There is -- that rests my case. So the other thing that you brought up, I guess you basically -- I wanted to clarify one thing that you said. You said there would be a seven to \$8 billion shortfall this fall? Or next?

>> With the start of the new 10-11 year.

>> Councilmember Pyle: 10-11, okay. At least it's not this next couple of months.

>> Mayor Reed: I think that's the best-case scenario, Councilmember Pyle.

>> Councilmember Pyle: You're not kidding. But because people are not spending the money, there has been more of an employment increase from, it's now what, 11.3.

>> Mayor Reed: 11.8?

>> Councilmember Pyle: And expected to go to 11.6. We're going to have fewer people spending money out there, probably by this fall we will have more money. Or are you thinking of the accumulation of it with the 10-11 figure, the 7 to 8 billion? I'm just wondering if we're going to have to have another adjustment before the end of this year.

>> I think it's fair to say that somewhere we're optimistic we'll make it through the rest of this session. But it could very well be this fall. Everyone is hoping that this will not have to be reopened until the governor is obligated to present his new budget in January with the start of the new session.

>> Councilmember Pyle: So we have six months we can pretty much count on. Well, that's it for me. Thank you.

>> Mayor Reed: I think six months is optimistic.

>> Councilmember Constant: I wouldn't count on that.

>> Councilmember Pyle: I wouldn't either.

>> Councilmember Constant: But I'd just like to it's very nice to see that the state legislatures don't let the constitution get in the way of good budget. If we weren't in such bad financial straits, I'd say maybe we should buy a bunch of copies of the constitution and mail it up to them so they can be more mindful of it. That way of course when they run out of money and can't buy toilet paper, they'll have something, since they're not using it for anything else. That's about all I have to say about our state budget.

>> Mayor Reed: Okay, we'll have a further report on Tuesday. But on Tuesday we want to focus more on what happened, not how it happened, and what process we are going to use to cope whatever the impacts are on us, which are significant.

>> Betsy Shotwell: Thank you.

>> Mayor Reed: Nothing on federal to report. We have no meetings scheduled, we did the public record. Appointments to boards, commissions, and committees.

>> Councilmember Constant: Motion to approve.

>> Councilmember Pyle: Second.

>> Councilmember Constant: Both of them.

>> Mayor Reed: We have two recommendations to appoint David Oster and Kasey Ong. Kasey Ong to the youth commission, David Oster to the mobile home advisory commission. All in favor, opposed, those are approved.

>> Lee Price: Mr. Mayor, could I ask for a one-week turnaround so we can get that on next week's agenda?

>> Councilmember Constant: Yes, that would be my motion.

>> Mayor Reed: Okay on that. 10.2 is the City Auditor's report on the American recovery and reinvestment act internal controls.

>> Sharon Erickson: Well, this is a good news report, I hope. The City Auditor has assessed the city's readiness to receive ARRA, or recovery act funding, and given the recovery act requirements are still in flux, and some don't require immediate compliance, our preliminary assessment is that the city is making appropriate progress towards establishing the necessary internal controls. The recovery act includes specific rules to ensure funds are used in an appropriate purpose and are transparent for the public. Individual programs funded through the recovery act have some specific limitation. Those can include matching requirements, additional reporting requirements, maintenance of effort provisions, we're tracking all of those. We included a table and exhibit in the report which lists some of the key recovery act transparency and accountability requirements. I just wanted to point out that some of those are easier than others. Number 2 on our list was that we establish a city Website and we link it to the federal Website. We have done that. For the multitudes out there watching, the Website is www.sanjoseca.gov/recoveryact. Do a little free promo for that. The City Manager's Office is responsible for keeping that website up to date, and it has been established. There are other things where the city already had controls in place. For example the OMB issue guidance that we need to make sure that we're addressing instances of fraud, waste and abuse. Well, the city already has a code of ethics policy, we have a whistle blower hot line, and the whistle blower hot line is prominently displayed on the city's Website. I want to point out that other things are problem latic. Establishing appropriate and allowable administrative cost. As we look into this it varies from grant to grant, from department to department. So those kinds of items as we show on this table are still under discussion. And then we did point out that there are some issues that we'll be following up on. Recovery act funds are available on a reimbursement basis. Thank you very much, we are going to get millions of dollars, but we get to front the money for at least a month and eat the interest costs for that. The City Manager has advised departments that they need to be prompt in requesting reimbursement, and we feel that will help address the issue. Past city audits have shown that our grant oversight and contract monitoring can be inconsistent in our city departments, so this is an issue that the City Auditor thought this will take up with future audits. Another potential issue is that the recovery act of course requires that we report online, within ten days after the end of the calendar quarter, first report will be due October 10. We are confident that the City's establishing procedures that they can track those expenditures. Finally, I just wanted to point out that in many cases -- in many of the federal departments have established guidance, but in other cases, guidance and methodologies are still being developed. We're working closely with City Manager's office staff to ask questions. Federal agencies are issuing guidance, they're issuing Q and As. And when we go and we talk to them, they admire our questions and realize they're going back to Washington to figure out some of this. So a lot of this is still under development but we are closely monitoring. I did want to thank

the departments who helped us put together this report. And you can see from the long list of CCs that we attached there's a significant city effort underway to ensure that recovery act funds are put to work in San José, and that their use is appropriate. We will be following up in future reports. We'll issue a second report. What we're planning to do is an update sometime in the fall after the city has issued its first report on spending. We'll review that report and confirm that we've -- meeting the accountability and transparency requirements for that report which will be as of September 30th, 2009. And then we are projecting that we'll do subsequent reports of specific recovery act expenditures of specific programs as we roll into next year. I'm happy to answer any questions.

>> Mayor Reed: I had one. Have we actually received any recovery act money? As opposed to promises?

>> Ed Shikada: As I believe in fact as of yesterday we received the first wire transfer of I believe it's on the order of about \$50,000.

>> Mayor Reed: 50,000 out of --

>> Sharon Erickson: \$65,837.

>> Mayor Reed: That's out of the \$50 million that we are probably going to get, eventually maybe, when they get around to reimbursing us.

>> Sharon Erickson: I believe that's up to about 56 that we're expecting.

>> Mayor Reed: Okay. Does that include the Work2Future money?

>> Ed Shikada: It in fact was Work2Future funds.

>> Mayor Reed: Okay, because we are already spending the Work2Future money, summer jobs for kids.

>> Ed Shikada: This was submitted some time ago.

>> Mayor Reed: Okay, summer's almost over. All right, well, not much stimulus in \$65,000, so looking forward to somehow getting local stimulus out of this. Councilmember Pyle.

>> Councilmember Pyle: I had one question, Sharon, on page 2 of your report you mentioned in the first whole paragraph, that we -- the 50 million and \$4 million grant allocations and the additional funds through other grant program, do you have an idea of what the total amount would be at this point or is that the 56 that was referred to a few moments ago?

>> Sharon Erickson: At this point it's my understanding it's 56.5 is what we're expecting to date.

>> Councilmember Pyle: That's wonderful. If we could get it in one lump sum it would be even more wonderful.

>> Ed Shikada: That much we know will not be forthcoming, unfortunately.

>> Councilmember Pyle: All right, go ahead.

>> I was just going to add on, so yeah, right now, based on allocation formulas that are competitive, we are expecting about 56 million. We have several other applications in but have not heard back yet.

>> Mayor Reed: 56 is just on formula-driven allocations?

>> Most of it is on formula. One of them was competitive.

>> Mayor Reed: What was that competitive one?

>> It was -- actually two. So it was internet crimes against children and then the recycled water one was, so that was competitive.

>> Mayor Reed: Good, so you may have noticed that we didn't get COPS funding.

>> Yes.

>> Mayor Reed: And having looked at the criteria for the COPS funding there's good news and bad news. The bad news is we didn't get any money. The good news is we didn't qualify for any money, because it's based on crime statistics and financial condition. Sometimes it's good to lose, I guess but we'll be in for another round of COPS grants as well. Anything else on the report? Okay.

>> Councilmember Chirco: Move to accept the report.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion to accept the report. All in favor, opposed, none opposed that's approved. City Auditor's proposed fiscal '09-10 work plan.

>> Sharon Erickson: Hello. It's within the purview of this committee to approve our work plan for the next fiscal year. As part of our annual review of potential audit subjects, we solicit suggestions from councilmembers, from members of the public and staff. We also do a citywide risk assessment model. It compares several factors, including proposed expenditures, revenues, number of staff, whether there's been a request for an audit, and the date of the last audit. The results of that model are attached. We generally try to give attention to the top 10 items on that list. If I could briefly summarize some of the

items, we've got four financial audits on the proposed work plan. There are five ongoing projects which include things like recommended -- recommendations status report, our service efforts and accomplishments report Ongoing audits of redevelopment agency disposition and development agreement. We have seven items from last year's work plan that are already in process and we're continuing with those. And actually, since this report was meant to be presented to you in June, and since that time, we initiated two more from last year's work plan. So this report shows three carryover projects. We have initiated the audit of major contracts and community center staffing. I did want to point out, there's one other carryover item. Police department secondary employment program that was addressed in a manager's budget addendum. At the same time I think that would be well to keep that item on our list. It was originally targeted at traffic control and maybe refocus on secondary employment, so I am recommending we keep that on our list. There are 14 new projects on the list. Everything from take home vehicles to traffic citation revenue. We're all looking for money. To high-ticket items like pension, costs and personnel costs. To smaller things like verification of performance and cost of the Department of Transportation sewer line cleaning program. By smaller I don't mean less important. I just mean they take a shorter amount of audit time. There are a few other audit administration issues that I just wanted to point out. We will continue to provide an enhanced training to city employees on how to incorporate risk analysis and internal controls into management strategies. I believe that's critically important especially as we reduce the number of staff, number of managers around the city. And then number 36 is the biannual audit. There is the audit of the auditor. We will be coming back to you with a recommendation that the city council contract with the association of local government auditors for our biennial peer review. In return, we send a couple of our people out to do similar audits of other jurisdictions, which is an incredible learning experience for all of us. There are, of course, there are 37 items on this plan, which my staff is kicking me about. There are -- I wanted to point out though a number of items that we did not include on the bottom of page 6 that showed a list of items that were requested or that came in, you know, up on the radar screen that we did not include. And I did want to point out one of those in particular, the process review of significant requests for proposals. This has been a process that has been in place for the last five years, I believe. Over the last several years, my office has reviewed eight unique RFPs. We made valuable comments. But didn't find anything earth-shattering. The process that was put in place, after the City Manager's reform several years ago appears to be working and we now believe our time would be better spent auditing contracts themselves. We would always be available if the council desired or staff desired for us to review an RFP, but I'd like to extricate ourselves from the automatic review of large major RFPs. Finally, as audit work proceeds I will forward to the council the monthly reports as you see and our progress. As we initiate any audit we always put out a request to to you see if there's any particular areas of interest or question that you have regarding that subject area. This is intended to assure that our audits are responsive to your needs. We'll be working with staff on the timing of audits through the coming year. With that, I'm happy to answer questions and ask for your approval.

>> Mayor Reed: Okay, I have a question about two of the new ones, the 27, 28, and you list the annual financial scan of city funded community based organizations and the audits of community based organizations. If I remember from previous briefings on this, the scan materials or documents or system that we use is something that's being made available to community organizations. My question is, how can we help these community organizations deal with the fact that we're going to be looking at them? Do we tell them in advance here's what we're going to look for here's what the audit looks at, so people are not surprised?

>> Sharon Erickson: Fortuitously, Patricia Gardner and I met yesterday and she's suggesting, and as I understand it, the office of economic development is preparing to do a contractor's class with nonprofits, please somebody speak up if they want to.

>> Mayor Reed: Jeff is here.

>> Sharon Erickson: This would -- at this time we would be invited in order to brief organizations on what this would be. The scan that we're talking about is simply a financial review, financial statement review of organizations that receive at least \$200,000 from the City of San José cumulatively. These organizations are already required to submit financial statements. In lieu of training staff across the city to do these kind of financial statement reviews, my office would do the first pass, put out a report that's public, based on those reviews, more in-depth work would be done by Jeff and his staff.

>> Jeff Ruster, office of economic development. And everything Sharon just said, I think our timing for the contractor training would be October-November. Sharon would go in to begin her financial review, somewhat at the beginning of the calendar year. By that time we would have most of the external audits

in from the community-based organizations to do the financial scan to kind of do the ratio analysis of the financial health of the organization and to flag any majority audit finding that would be contained in that documentation. We would then turn around and provide a report back to city council kind of summarizing the findings of all the community based organizations that receive above a certain amount in funding.

>> Mayor Reed: I'm going to make sure that the organizations have a chance to understand what we think is important so that they're not surprised and we have a ratio that we say is out of balance, that they weren't even paying attention to.

>> And that would happen at the contractor training.

>> Mayor Reed: So this would be an open-book test.

>> Yes, right, right.

>> Mayor Reed: Okay. Well, I think that could be helpful to some of the organizations. Any other questions? I did have a request from Patricia Gardner to speak on this. Why don't do you that now.

>> I think -- thank you very much for your comments. In theory we support the financial scan. But we do want to meet about the scope and content, because nonprofits are not immune from this financial crisis. Donations are down 20%. We've laid off, as of July 1, we lost \$14.8 million in the nonprofit sector, that was 8% of our government funding left July 1. And then we're going to go through another round I'm sure at the county. So we're not immune to this. So I don't want anyone to be surprised if it shows we're having cash flow problems. The ratio I think is going to be very difficult for us. Just like you didn't get your reimbursement, 65 -- we're in the same place. I just don't want anyone to hold us to a different standard than the rest of us are at. In relationship to the contractualing camp, I'm really excited about doing that, but I'm going to still ask for it to be all contractors, not just those receiving \$200,000. I think the issue is for everyone to get on the same page, not just a few. And because, in the HNVF process this last year, so many of our grantees are getting higher amounts, than the 150 number, that means that next year they're going to be in this pile. I think giving them an early ability to understand what's coming their way next year, this year is very important. So I'm going to keep asking for that to be open to everybody not just the 200. Because for many of your organizations you funded much less than 200 but they still need to understand if rules, the exhibit Fs, the entrance requirements how you get paid and what your audit requirements are. So I really encourage it to be for everybody and for sure, before Sharon begins her audit and financial scan we need to make sure everybody, no matter how much they contract with the city, understand is what your rules are. Because even though they might not hit the financial scan today, it doesn't mean that if they have a problem you won't be coming in there later. So I think everybody's got to play.

>> Mayor Reed: Anybody else on this? No? Questions or comments from the committee? Nancy.

>> Councilmember Pyle: I just want to congratulate you, Sharon. Not only the quality, but the quantity of work that you do. Very impressive and I really appreciate the thoroughness. Thank you.

>> Mayor Reed: Anybody else? Okay, do we -- we need a motion to report the work claim.

>> Councilmember Pyle: Motion to approve the report.

>> Mayor Reed: Motion is to approve the work plan. All in favor? [ayes]

>> Mayor Reed: Opposed? None opposed, thank you oh, Sharon, before you leave, if you're not leaving, you must still be on the agenda, 10.4. That's the monthly report of activities for June of '09.

>> Sharon Erickson: We'll keep this really short. During the month of June we issued several audits. The audit of employee medical benefits was heard by the PSFSS committee, or however we say that. It's on the agenda for next Tuesday with the city council. We issued the audit that you just heard of the city's management of the recovery act funds. We also issued our audit of the San José Conservation Corps agreements. That one included 10 recommendations. The report was issued in May, was slated to be presented in May because at the request of the Conservation Corps it was deferred until the June meeting. It now will be coming back, the committee held it in committee, it will be going back to committee, potentially in September, although the corps has requested an additional deferral and we'll be talking about that. We also issued of course our proposed work plan. Just so you know, the things that are coming up next, the service efforts and accomplishments follow-up report, that's a report on city's performance measurement and management system. I'm hoping to bring back to Rules in August, later on next month. And then we have an audit of the parks trust fund administration, scheduled for September at the Public Safety, Finance and Strategic Support Committee. That's my report.

>> Mayor Reed: Anyone?

>> Councilmember Constant: Motion to approve.

>> Mayor Reed: Motion is to approve the report. All in favor? [ayes]

>> Mayor Reed: Opposed, none opposed, that's approved. Thank you very much. 10.5 is the agenda streamlining measure. City Clerk, City Manager.

>> Lee Price: Thank you, Mr. Mayor, and members of the committee, I'll take this one. This is a joint memorandum from the office of the city manager and the city clerk. Deanna was actually going to present it but needed to leave early so I said I'd be happy to do that. Our office is, and working closely with Rick's office, have been working really hard this last year to try and streamline as much as possible the council agenda and the council committee agenda process, recognizing we've had some new requirements thrown in with the sunshine rules or open government reforms that require additional notice, backing, you know, the calendar out a bit, adding new paperwork to your council agenda, like ordinances, resolutions and contracts as well as other information here to help you make the tough decisions you need to make each week. So in our effort to try and save costs, reduce our reliance on energy and paperwork, excuse me, on paper, we have done a number of things over the last year to streamline the council agenda. We've gone to a lot of paperless distributions. We recognize that scanning the documents and e-mailing them out to you all may not be truly resulting in a paperless distribution because many people do hit print. We do recognize that, but we are making an effort to send out informational memos, supplemental council memos, supplemental memos from the administration and other council appointees, as well as reducing the number of the council packets that we actually publish each week. In addition, we are trying to reduce the A printing large documents and we're being successful in those efforts. Internally our coordination efforts have been looking at the actual development of the agenda process which is quite tedious, it's quite complex, we're a big city, we have a lot on our agenda, we meet weekly, and have county committees and there are a lot of balls to juggle. We are trying to use existing technology to do more. Shared folders and developing documents internally to develop the council agenda and the committee agendas in a more efficient manner. Beginning tomorrow, a group of facilitated discussions will begin with folks in the manager's office, my office, Rick's office and some of our key contributors to the council agenda process. And looking at ways that we can identify opportunities to streamline our work flow. How is it that we've developed the agenda, how is it that things move from council committee onto the council agenda, looking at ways that we can streamline just the council memo writing process. In larger departments it's really quite complex beginning with, you know, perhaps an analyst or a project manager starting the work and then it moves up the ladder if you will. So we're looking at work flow technology when we don't really have work flow technology. Lacking a sophisticated content management system we are going to spend at least six sessions facilitated with a consultant that came on board last year to work with us to define and develop a scope for an electronic content management system which is now off the table, because of the budget issues. However, the consult is still available so we're tapping into that resource that we have for a very limited time. Other streamlining measures that we're putting into place or that we're exploring, are beginning on page 2 of your staff report, e-signatures for council memorandums. This is a pilot program that is going to be launched in the administration. The Departments of Transportation, Environmental Services, Airport and Public Works are going to begin a process whereby councilmembers will come forward without the actual electronic signatures of the department director and city manager. We are looking at developing a templates for routine council items, so as you know we have a very standardized template for our council agenda memos that come forward. So taking a look at those that are more routine in nature, many times those are going to be the items on your consent calendar and maybe others to develop a template that will be more efficient and easier for staff to put together, it will be easier for you to read but as long as it contains all the information that the council needs to have in order to make that decision. There is a copy of a suggested template attached to the memorandum. We've already begun reducing the number of distributions of committee packets. We're looking at providing paper packets to the members of the committee and the staff that support you. So far that seems to be going well, we've been doing some outreach with council offices and other departments to ensure that this won't be a change that will be too difficult to manage. You've also already approved the schedule for the next six months of your council meetings to reduce to one evening session per month, that will save not only some of your time and staff's time but obviously many of the resources that go into conducting a council meeting, including AV support, building maintenance, security staff, et cetera. So we will want to revisit that, and talk about that in the future, and determine whether or not that's something that the council finds valuable.

>> Mayor Reed: We're going to run out of time so hope you're close to the end.

>> Lee Price: I am. So with that I'll conclude and take any questions you want to have.

>> Mayor Reed: Okay, questions.

>> Mayor Reed: Looks good. Keep working.

>> Councilmember Pyle: Move to approve.

>> Mayor Reed: All in favor? [ayes]

>> Mayor Reed: Opposed, none opposed, that's approved. Taking us to council committee items, we have work plans for each of our council committees. The memos from myself and committee chairs on each of those. Any discussion on any of them?

>> Ed Shikada: Mr. Mayor --

>> Lee Price: Mr. Mayor, if I could -- did I jump ahead?

>> Ed Shikada: Go ahead.

>> Lee Price: Going to the PSBSS -- Public Safety, finance and strategic support committee we did put out an amended work plan. You should have a copy of that. It does make a couple of changes to the committee work plan that was previously distributed in late June and in addition to those changes, I would also like to make a couple of other notations. On page 2 of the amended work plan, August 20th, item 3, City Clerk technology update, that's a holdover from a different era so you can actually strike through that one. That should be dropped. October the 15th, the administration would like to add procurement reform to that agenda. The November 19th agenda, the administration would also like to add pension obligation fund financing. Ed, did I miss anything?

>> Ed Shikada: Thank you, you got it.

>> Councilmember Pyle: Move to approve all reports.

>> Councilmember Constant: Second.

>> Mayor Reed: Any changes on any of the others, other than the Public Safety one? Okay, we have a motion to approve all of them with the amendments to Public Safety, all in favor? [ayes]

>> Mayor Reed: Opposed, none opposed, those are approved. Taking us to open government initiatives, we have the Sunshine Reform Task Force recommendations on the balancing test. This is a return to the committee after some lengthy discussions with some direction to make some changes and bring things back to us. Do I have a couple of requests from task force members to speak. We'll get to that in a minute. Tom.

>> Tom Manheim: Thank you, Mr. Mayor, committee members. Yeah, just to refresh all of us on where we are. On April 15th we had a very lengthy discussion about the balancing test. And coming out of that meeting, the Rules Committee accepted the staff's recommendation, essentially approved that direction, with some amendments or with some suggested additions, and asked that before we actually go to the city council with those, we come back to Rules just to confirm that we've gotten that correctly. So that is our intent today. I would just add that on -- when we were before you in May, you then asked that we include in with all of the other phase 2 items that you have so far approved to go to council. That is currently scheduled to go to council on August 18th. So we are moving forward with that direction, and our intention, assuming that we have gotten your direction correctly and that you confirm it today, we will be putting out a memo for that council meeting actually next Monday. So we're trying to wrap that up could be current with this.

>> Mayor Reed: And I'll go to the council meeting with the original task force recommendations staff recommendations and where the committee came out.

>> Tom Manheim: Exactly. On the balancing test and the items yet to go before the police commission, your direction mayor was on those items to make sure that we forward both the original recommendation, the staff recommendation and then the Rules recommendation. Those will be included. With that I will turn it over to Lisa who will briefly walk you -- oh, I did want to clarify one thing. We did put out a memo for the June meeting and then we put out a replacement memo because in rereading it, we realize there were some areas that we could worded more carefully. So we tried to clarify those in a replacement memo. I understand that when these were posted, both the original memo and the replacement were posted. But the item before you was issued on July 16th -- actually on July 20th. It is the one that has the very short cover memo and then the memo attached to it. I hope this is not confusing and I'll turn it over to Lisa now.

>> Mayor Reed: And specifically for this Rules Committee dated July 29th.

>> Tom Manheim: Yes, exactly.

>> Lisa Herrick: That's right. And I hope everyone has a copy of the memo, because I was just going to go over the four bullet points which encapsulate what we understood the committee -- the direction from the committee and refer you to where the change has been made in the proposed language. So the first bullet point is adding a reference to the mental process principle. I recall there was some discussion

about making sure we have every sort of test made clear in the proposed ordinance, so that the public is aware of all sorts -- of every type of reason why we might decline to produce some records. So that actually is added on its own special section on the very last piece on page 3 of 3. So if you've got the memo and you're following along, that's page 3 of 3 of the proposed language. This makes clear that it's under the case law, what the mental process privilege protects. Around this was -- I did make an attempt to articulate that when we're going to meet in June, Tom Manheim did a bang-up job editing it so the entire world can understand what it was that I was trying to say and so I hope that that's much more clear. The next point was that we needed to clarify that the deliberative process privilege, that by explaining what deliberative process is, we weren't expanding in any way what the balancing test or case law provides. And so that clarification is intended to be articulated at the beginning of section B of the language, and that's on the configuration page then of the attachment. And so what we've added is, consistent with case law and government code section 6255 question is the section that sets forth the balancing test. The third bullet point or the third clarification that we were making is just making clear that to the extent that we were going to provide calendars and never apply the balancing test to withhold any calendars, that we make sure that that was consistent with what the council had approved for calendars in the first phase of the Sunshine Reform Task Force's recommendation. And that is, then, made clear, I hope, at the top of page 2, in section 4. I might interrupt myself, just to point something else out. When we were here in April, we had a list of items that we suggested should only be withheld if the -- if staff presented to -- a reason, good reason for withholding the information to the Rules and Open Government Committee, and the committee agreed that the balancing test should be applied to those records. We -- on reflection, we ended up splitting that one long list into two separate lists. And that was reflected in section C and new section D. So section C is a list of records that will never be withheld on the basis of the balance test, and only section D are the records where staff would come to -- the categories of records where staff would come to the committee and say, we received a request, we think we should apply the balancing test, and here are the reasons why. And the balancing test would only be applied then if the committee agreed that that was appropriate.

>> Tom Manheim: I would just add that was frankly done because, in listening to the comments from Bert Robinson, we thought it was quite correctly pointed out that there were some things on there that we would never apply the balancing test, for instance, meeting agendas that have already been posted, things like that. And we were trying to simplify it with one list, but we realize by doing that, we weren't doing ourselves a favor in terms of what we were conveying about transparency.

>> Lisa Herrick: That's right. So because the calendars are posted, calendars after the fact are posted, excluding this type of information that's set out here, that that then is consistent with the current council policy. And the last addition that we made is, I recall there was some discussion in April that sometimes, application of the balancing test is a matter of timing, and it may be that it's important to hold it for a particular point in time, and then something will happen that makes -- eliminates the need to withhold the record. And so we wanted to make sure that that language would where be clear to the members of the public. And so we added a section E, and I'm sorry to be flipping back and forth here, but that is also on page 3 of 3. And so new section E explains that if the justification for withholding some information under the balancing test will expire at some point, that we make that clear to the requestor. So those are the changes. We think that was consistent with the direction we got from the committee in April.

>> Mayor Reed: I would like to add one more thing to the work which you've done. I'd like to add a statement much intention, it is the intention of the City of San José to narrowly construe the balancing test if it limits the public's right of access, which is more or less a restatement of what the voters approved in proposition 59. I think that would clarify that we're not trying to broaden the balancing test. We're trying to narrow it. Because there's certainly some uses of the balancing test that we've seen, not necessarily by the City of San Jose, but others that have been pretty broad in their interpretation of where balancing test can be used. So I'd like to make that one additional change. Otherwise, I think you have got it pretty close. Pete.

>> Councilmember Constant: I just have a question in the calendaring. Items B through J mentioned administration but not appointments. So in effect, are we saying the appointment must show on the calendar, but the information is just labeled as excluded, where A, the appointment itself doesn't even show up on the calendar, is that correct?

>> Tom Manheim: That's correct. That is the way we have been, as we've worked with different people, what we've been explaining is with the exception of personal appointments, which need not be shown. Appointments that the information about an appointment that would for instance attorney client

privilege, it would be silly to be putting all the information in there without restricting. So we just say attorney-client privilege, so that the calendar is clear that a meeting had occurred, but the information that was withheld was being withheld for that reason.

>> Councilmember Constant: That's what I thought. I just wanted to make sure that I was reading this correctly.

>> Mayor Reed: Any other questions or comments from the committee?

>> Councilmember Pyle: Move to approve (inaudible).

>> Mayor Reed: Okay.

>> Councilmember Constant: I'll second that.

>> Mayor Reed: Motion is to approve, and second. We have some requests to speak on this before we get too far along. Bert Robinson and then Bob Brownstein. Your choice, gentlemen. I think Bert got here first. (inaudible)

>> Bert Robinson: The proposal you have before you I think is slightly better than the proposal the last time, but I still think it's a bad alternative. And I think on balance it's worse probably than doing nothing. The approach the Rules Committee chose to take to the balancing test was one that I believe was intended to narrow the number of records to which the balancing test could be applied. I think an approach like that would work only if the committee were willing to endorse an aggressive list of records for which the test is off limits. Adopting a relatively modest list such as this one may have a perverse effect. It encourages city officials to consider the balancing test for any records that do not fall under the enumerated list. The balancing test is supposed to be used only on rare occasions, not for every record that you can figure out how it doesn't fit under a particular list. Number 2, in trying the deliberative process privilege in the sunshine law makes, I'm afraid, a mockery of the concept of sunshine. The prime purpose of other sunshine laws has been to disavow the use of that loophole. San Jose's proposed deliberative process language explicitly, quote, protects the process by which policy decisions are made. That runs counter to the purpose not just of city sunshine laws generally, but of every open government law I know of. Lastly, while the Mercury News suggest a mental process privilege at your last meeting as a narrower alternative to the deliberative process language, the language before the Rules Committee incorporates this privilege as an additional loophole. We're suggesting it as a narrower loophole, not as an additional loophole. Conclusion, let me just say something that you've heard from me before. There are two cities in the Bay Area that have been living without a balancing test for some time. There's been a lot of talk about all the terrible things that would happen if the City of San José didn't have one. But as far as I know no one has been able to point to a single example of something unfortunate that has been revealed in San Francisco or Milpitas because there was no balancing test. The mayor of Milpitas testified before you and told you it wasn't a problem not having a balancing test. Given -- even given that testimony, because he also testified to the sunshine review -- Sunshine Reform Task Force, the task force recommended to you an approach that provided some explicit protections for some of the records your staff told you you needed protecting. In a spirit of compromise the Mercury News offered two additional approach to this committee. You have one very good approach before you from the SRTF. You have two acceptable alternatives. There is no need to resort to the bad approach you are currently considering.

>> Mayor Reed: Bob.

>> Bob Brownstein: Mayor Reed, members of the committee, I'd like to suggest one amendment to the language that's before you, that's item C-2 which lists city budgets proposed and adopted as records that the balancing test would not be applied to. I would like to add to that section city budgets and to background budget details. The fact is the budget details, just because you don't want the budget to be humongous, has aggregate data. But the public ought to be able to find out how much a department is spending for travel or how much the city spends on leases, or all the subdata that goes into making up the budget. That's not in the budget, for understandable reasons, it's too much data. But there's no reason the city should apply the balancing test if someone makes a request to find out how the City's spending its money. So I would suggest just adding those words, either background budget details or line item budget details, either one would make that information available.

>> Mayor Reed: I have a question for you. Would that apply to budgets, actual budgets or the proposed?

>> Bob Brownstein: I would apply to both proposed and adopted budgets. So for example, when the City Manager's proposed budget comes out and somebody wants to know, well, how much is -- are these three departments spending for travel, budget doesn't have that breakdown. As I said, understandably, if you made that public records request it couldn't be denied on the basis of the balancing test.

>> Mayor Reed: The question I'm getting at is, are the departmental work that gets done to roll up into the recommendations that roll up into the budget, because there's -- I know there's some concern that if what the department heads are recommending to the manager, that don't get incorporated into the budget, whether or not those should be made public, because -- well, it will do something to the budgeting process?

>> Bob Brownstein: That's a good question, Mayor Reed, perhaps those kinds of -- that kind of data could be included in the second category, category D. That could be denied if the -- if the Rules and Open Government Committee suggest that it's legitimate to deny it. You have two categories. C is --

>> Mayor Reed: Okay.

>> Bob Brownstein: Thank you.

>> Mayor Reed: Thanks. Anybody else want to speak on this?

>> City Manager Figone: Mayor, I'd like to comment on, depending how the committee wants to entertain the proposals that have just been made. Some of what Bob described I would put in the category of work papers. And I would want us to think that one through. And they might appropriately fall under D. In some cases there are several iterations, and they might not even be kept as records, which I know would probably fall under another consideration, which is what is truly a record and what is not. But at the end of the day, what is the final adopted budget, there is kind of a roll-up to that budget. But there, as you've alluded to, a heck of a lot of work that goes into getting it to that point. And so again, I would want us to consider whether or not those two would fall under the category C or D.

>> Mayor Reed: Well, my concern is if you tell your staff to be creative think outside the box and give me some creative proposals and they think those are going to be public, they're probably not going to be nearly as creative as you want them to be. Or they'll go in the opposite direction of let's be so creative let's close the Washington monument, kinds of approaches, I'd like to think about the issues -- Mr. City Attorney.

>> City Attorney Doyle: I think Mr. Mayor this falls under category B which is deliberative process. It's clearly the thoughtful process that works up to the manager's final decision. So I mean, in keeping with the City Manager's comments about work papers and what gets released, I think there would be a balancing test applied at the time. So I mean, you could probably put it into either category, but I think those concerns are legitimate.

>> Mayor Reed: Well, I'd like for the City Manager to think about this before there gets -- by the time it gets to the council. Because if people want to know how we're spending their money, that's certainly a good question for people to ask. But I don't know how to describe the information that we ought to say yes, they can have this information, as opposed to information, this might fit into one of the other categories. I think we'll need to answer that question as we get to the council decision on this.

>> Tom Manheim: Mr. Mayor, if I could just clarify or ask a clarifying question. I believe that Mr. Brownstein's original proposal was essentially getting more at what had been an earlier task force proposal that the Rules Committee rejected, which was that a line item budget be produced. I believe if I'm understanding your suggestion, Bob, is that that detail that would be in a line item budget, did we produce one, that that not be withheld based on the balancing test?

>> Bob Brownstein: Yes, my original proposal was that the line item budget is what the proposed budget is built on would not be rejected and then since you mentioned the idea of the thoughts that went into producing that document, I think those would probably fit under D. But I don't see any reason why the city would withhold the basic lineup item information that everybody in this city administration has agreed to which is now in the proposed budget as the foundation of it, it's just that the public can't see it because they don't get into that kind of depth.

>> Tom Manheim: One comment after quick consultation with Lisa is we don't think that would ever be withheld based on the balancing test. We do -- we can imagine there can be considerable expense with trying to make that information available if it were to be requested. And I believe under the Brown Act -- under the Brown Act we could -- public records act rather we would charge for the cost of creating that report, essentially.

>> Mayor Reed: Okay, I'll let you guys think about that one. We've got a couple of weeks before this gets to the council. I don't think we have to answer it today.

>> Lisa Herrick: So we'll forward this to council as amended?

>> Mayor Reed: That is the motion.

>> Lisa Herrick: And with your intent.

>> Mayor Reed: With the one change I requested. Is there any further discussion on this? We have a motion. All in favor, opposed, none opposed, that's approved. All right we're getting down to the end. We still have the public records act requests by Gay Gale who is here to speak to it. Gay.

>> Gay Gale: When I came before you in June, in sort of an unusual action, I was pleased with Councilmember Constant recommending that I come here. And I wanted to report back that while I haven't got all of the data yet, I have found great comfort in the fact that both the City Attorney and the City Clerk followed up on your direction, and especially, I'd like to thank the City Manager's staff, the communications director, Tom Manheim, the budget director Jennifer Maguire and public records manager Tom Norris for continuing to work with me to get this information. The CAMP board of directors has approved financing for some those reports as Tom has suggested and we are constituting two committees to help with extending the concept of open government and supporting our initiatives for better ways to look and do our business, by -- and the two committees are -- will be looking at, first one will be looking at the budget as it relates to staffing, and from two perspectives, a longitudinal perspective over the last two years negotiably and then a specific in-depth perspective over the 08-09 change to 09-10. And that's when some of the reports will become very valuable. We intend on doing a complete analysis using both internal and external resources and coming up with recommendations that we hope will be able to positively affect budgeting in the future from our studies. The second committee will be looking at the process of exemptions when staffing decisions are made, exemptions to bumping process in the staffing cuts that have gone on, and that also will look from a global perspective both of these committees will work on behalf of all staff, not just camp staff, but staffing as a whole, and hopefully bring forward additional recommendations for better understanding of process, for removing the black box so that both the public and staff and administration can take advantage of recommendations for making the process as humane as it can possibly be when, by nature, it is not. So I want to thank, again, both the committee and staff, in helping us get to that area, and hope that this type of request doesn't need to come to you again. Thank you.

>> Mayor Reed: Thank you. Anybody else on that item? I think not. There's no action to be taken. We have nothing under manual update. Open forum, anybody wish to address us under open forum? Okay, thank you.