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>> Mayor Reed: Let's call the meeting to order, Rules and Open Government committee meeting for October 5th, 2011. First question is are there any changes to the agenda order? I have one. And that is item H-1-a the request to add to the auditor's work plan an audit of the incubator and entrepreneur center, we'll take up at 2:30. I think we'll be there by then but if not we'll skip ahead to get to it 2:30 or before. Any other changes to the agenda order? Okay. Then let's move ahead with the October 11th meeting cancelled. We just start with the October 18th council meeting agenda. Anything on page 1? I think we're going to add an adjournment in honor of Jim Beall, Sr. Anything on page 2 or 3? Page 4 or 5? Page 6 or 7? See item 3.6, Planning Commission interviews, we're expecting seven or eight applicants, at a what it looks like?

>> Dennis Hawkins: Excuse me, that's correct Mr. Mayor.

>> Mayor Reed: That will be about two hours of time. Should look at the whole agenda to see if there might be something we want to move out of the way or if that's the best date for it as we get to the end. Anything else -- I'm sorry.

>> Councilmember Oliverio: Did the city clerk release the list yet of the people moving forward?

>> Dennis Hawkins: Excuse me, councilmember.

>> Mayor Reed: No.

>> Dennis Hawkins: No. Don't talk and breathe at the same time. No, we're still waiting for indications from one councilmember, so as soon as we have that, we will finalize the list and release that.

>> Mayor Reed: Okay. Anything else on page 6 or 7? Page 8 or 9? Page 10? Just nothing, we have some requests for changes. We have four items that are on the printed agenda with travel requests related things from variety of councilmembers. We have a commendation to Norma Rodriguez, principal San Antonio elementary

school and another travel request from Councilmember Chu to go to some places in China. Any other requests for changes?

>> Councilmember Nguyen: Motion to approve with the additions.

>> Councilmember Herrera: Second.

>> Mayor Reed: Motion to approve with the additions. I have some requests to speak on this. Mr. Wall. I think the requests here are all on this agenda item.

>> David Wall: I could consolidate them if you would like.

>> Mayor Reed: Please, only got one agenda.

>> David Wall: I would like to keep Councilmember Liccardo here in San José instead of going to Dublin. There's too much problems in his district that needs his immediate attention. If he can't find anything else to do garbage removal at 10th and Horning would be sufficient enough to retard this travel. Plus there's been too much travel by councilmembers to Dublin anyway, should be the other way around, seeing's how Dublin gets the better part of the deal. This business to China now I'm very concerned about councilmembers going out for airline routes to the airport. Because there's been no discussion of late as to how that will effect the curfew. Because I didn't see all Nippon airways or China air, Korea air coming into San José. If they have to be bothered with a curfew and I think there should be some coming to that from the -- or from you folks, as far as this -- these different foreign trips are being taken. Plus, I honestly think Councilmember Liccardo really needs to stay here. In addition, this funding of these trips, either be the Silicon Valley group or this U.S. China exchange council, are these lobbyists trying to curry favor with councilmembers, by funding this trip, even though it's above board and it's all, you know to the public's, you know, knowledge? The other issue is on the two critical transportation related priorities for an excused absence. I just want a point of clarification with those transportation related items are, that would be 2.A 4, Mr. Mayor, and thank you very much.

>> Mayor Reed: That concludes the public testimony in this agenda. Before we vote we didn't talk about the timing of the Planning Commission interviews and how we want to fit those in. That's a couple of hours, do we want to do them like at 3:00? Might be done with the rest of it by 3:00.

>> Dennis Hawkins: Mr. Mayor, we could also fine-tune that next week at Rules.

>> Mayor Reed: Okay, why don't we tie that down next week at Rules and see what things might have fallen off this agenda for one reason or another. But we at least ought to be able to tie it down to a rough start-time so we don't have them sitting here for a long time before we do the interviews like we have in the past. Okay so we have a motion to approve with the changes. Councilmember Herrera did you have anything?

>> Councilmember Herrera: No.

>> Mayor Reed: Anybody else on the motion all in favor, opposed, none opposed, that's approved. Redevelopment Agency, nothing on the October 11th. October 18th? Agenda? Nothing for the 18th? I will just pass on that. If there's something that comes up we'll deal with it next week. That's all the meeting -- regular meeting agendas I believe. So we'll move to the legislative update.

>> Betsy Shotwell: Thank you, mayor. Betsy Shotwell, Director of Intergovernmental Relations. I had this as a place holder, in case the governor had taken action on legislation that has gone through this committee to full council, and I'm still waiting for that action. He has until Sunday to sign or veto legislation. So the bills that you have taken action are still on his desk, and he has hundreds still, and there will be another announcement this afternoon of legislation, and I'll get that in the manager's report if there's anything of concern to the city or the city support.

>> Mayor Reed: Well I know that he vetoed -- he failed to veto the bill that we wanted to veto for redevelopment. Obviously bad news for redevelopment agencies and certainly bad news for us.

>> Betsy Shotwell: Yes.

>> Mayor Reed: Anything on the federal update?

>> Betsy Shotwell: No, continue rolling until November, traditionally October 1st is the deadline for the federal budget. But it was done very quickly and without a lot of dissention and headlines, which is a relief, compared to the all recent votes they've had.

>> Mayor Reed: Okay, thank you. Meeting schedules we have an item here or study session October 17th for the general plan update. Given the requests from the council yesterday to do a study session regarding labor update, October 17th is a candidate date for that. And I think since we have a request later in the agenda to move the general plan discussion from October 25th to November 1st, we ought to talk about October 17th for the labor update session, as the candidate date. Since it doesn't seem to be many other choices that we have a lot of people that are going to be gone this next week, so looking that we can't fit it in with the people out due to the holiday week. But it wouldn't just be the labor update. I think we need to include the possibility of having closed session at that meeting because there's no chance to have a closed session next week as well. So I think the -- you know we should agendize closed session as well as the open session on labor update, and closed session could be whatever needs to be dealt with in closed session. But certainly the usual labor closed session items.

>> City Attorney Doyle: 1:30 start?

>> Mayor Reed: Yeah I think a 1:30 start unless people think we want to --

>> City Attorney Doyle: So we would notice it as a special meeting of the city council and with a closed session agenda separately.

>> Mayor Reed: Right but I believe the anticipation is the labor update is not for taking action. It's a study session kind of a presentation. So --

>> City Attorney Doyle: Well yeah I think the agenda item would probably be discussion or presentation and discussion.

>> Mayor Reed: Right.

>> City Attorney Doyle: So not agendized as an action item.

>> Mayor Reed: Okay.

>> Councilmember Oliverio: Mayor, I'd certainly make a motion to drop the study session of the general plan on the 17th and substitute it with the study session as the council directed on Tuesday, to study proposals from the labor unions. And at the same time, I would hope that on the -- we would encompass a larger presentation from planning staff at the November 1st meeting to encompass some of the points they wanted to cover in the study session.

>> Councilmember Herrera: Second.

>> Mayor Reed: Yes, we'll get back to that November 1st meeting discussion.

>> Councilmember Oliverio: And I'd like to further add, mayor, on the substituting of the study session. I'd like to hear from OER at the Rules Committee meeting prior to the 17th to see if all their questions are being able to get answered, because I think that's imperative to a quality discussion on the 17th.

>> Mayor Reed: Well, certainly and I think we'll need to look at sort of the agenda more specifically like we usually do next week at Rules after OER staff has had a chance to frame it. Alex Gurza is here. Alex, do you have

any comments at this point about the scope of what we should cover on the 17th given the fact that we're just putting this together? But one thing I do want to make sure is that we have 11 bargaining units. And hopefully, we'll have some things to talk about on all 11. It's not just about five, it's about all 11 that needs to be agendized for this meeting so that we can talk about everything that's happening.

>> Alex Gurza: Yes, mayor, Alex Gurza deputy City Manager. If it's framed as a labor update yes we would anticipate providing the council with an update on all of the negotiation with all bargaining units. We are having a lot of negotiations so we don't know where we'll be by that point, in fact we had negotiations this morning we will have negotiations this afternoon with a lot of bargaining units. We'll provide an update where we are as of that date. However if there are any significant updates we can provide them to the city council as we normally would in an e-mail or some significant update between now and then.

>> Mayor Reed: You want to continue to update us if anything happens. We would look more closely at the agenda next week like we usually do get to see the agendas. Any issues that anybody knows of about the 17th, in terms of getting the quorum? This study session has been on the calendar for a long time as a holding spot so we shouldn't have any trouble getting a quorum. I believe based on the travel schedules that we've seen that the people that are traveling will mostly be back. So we'll at least have enough to hold the meeting. Any other issues that we should consider on this before the -- okay. We have a motion to change the topic on the 17th. And then we'll come back later in the agenda and talk about what happens on the 1st with the general plan. On the motion, all in favor? Opposed? None opposed, that's approved. So 17th, 1:30 special meeting. Then we'll take up the public record as the next item. Any items from the record the committee would like to pull for discussion?

>> Councilmember Nguyen: Notion to note and file.

>> Councilmember Herrera: Second.

>> Mayor Reed: Motion is to note and file. Mr. Wall did you want to speak on the public record?

>> David Wall: Yes, sir. Item B, the Lafco water report, should be required reading, with reference to just a few sections about San José. It's very interesting to see the state of the water fresh water situation. Item G which is entitled the California public records act and those who profit from the taxpayer expenditure. I think there has to be some form of review from these people that, for example, the learned Stanford professor, if you had chance to read the chapter 1 of his book that I included on the public record, you can substitute, instead of teachers union, public employees union and he could actually write another book. In other words you have people coming in here that utilize the research machineries and gathering abilities under the public record act for their own personal he enrichment and in sense of the Mercury News, not the Mercury News but it could be the Mercury News, specifically in this item it was the metro news, use it under the guise of sunshine for personal and/or corporate enrichment. And I think that if they're doing that for enrichment purposes the city should be compensated for the staff that's required to run the public records program, and also for their time to generate these documents. And I think that this is a loophole where people are taking advantage of it. And it has to change because this is too much. You were right, though, and you should be congratulated for voting down, even though the Stanford professor was very honest in everything he did. He was actually the most honest person I've seen, requesting and saying he didn't want to pay for it. But the metro was shameless. And they shouldn't have gotten away with what they did. There should be an even handed result. Thank you.

>> Mayor Reed: That concludes the public testimony on the public record. We have a motion to note and file. All in favor, opposed, none opposed, that's approved. Boards commissions and committees, we have a work plan from parks and recreation commission for 11-12. I had a couple of comments or questions on it. I'm looking at this work plan, and it looks to me like it's kind of business as usual. And I think we need to build into that work plan an opportunity for this commission to get educated on the very dire budget condition we're in and the probability of PRNS having to take huge cuts in funding. And I don't know how we'd do that. But you know, December we have financial sustainability category, and December I don't know what the RCS strategic plan is but I do know there's nothing more strategic than losing all your funding and that I think needs to be the topic of discussion, and that budget discussion has to be part of every conversation, whether it's Rancho Del Pueblo, family camp, or anything else. If you don't have money you don't have money. And I don't want this commission thinking that, we're just

here to talk about how we're going to spend money. So did staff want to comment open how we can work the budgetary reality into the commission's work?

>> Thank you, mayor, Steve Hammet, deputy director of PRNS. This is the conversation we have almost every session of the commission. They're very aware. We had budget updates every month all the way working through spring and our budget hearings. So they're very aware of that. We will be bringing more and more of our strategies forward to them in relationship to our budget deficit and what some of our goals and outcomes in PRNS will be. So they'll be a strategic part of our discussions.

>> Mayor Reed: Well there's a timing issue so if the commission is going to be helpful to the staff and ultimately the council in the budget discussion, May is not the time to have that conversation. The commission needs to be grappling with how do you manage a department that loses half of its budget, and how do you set the priorities and how do you make the decisions? And it looks to me like we've got some of that budget stuff out into April and May. And the department's going to be putting together its proposals. You're going to get an assignment from the manager percentage cut probably in December and that's the time to engage the commission in trying to help sort the priorities out.

>> Councilmember Herrera: Would it be appropriate to make a motion to include that in the December --

>> Mayor Reed: Certainly want to include it in the December discussion.

>> In fact we'll include it tonight. We have a commission meeting tonight and I will certainly bring that to their attention and these items of our budget deficits and issues that we'll have to grapple with we can deal with it starting actually tonight but actually working the way through every month.

>> Mayor Reed: Good, that's important. You understand it is not just do we want to save family camp? If we have to save family camp we've got to take $600,000 from some other place. And those are the decisions that

we're going to have to make. And if they can help us with that decision making, earlier is certainly better than later.

>> That's a perfect example. We've already had those discussions with them, but we'll bring that forward every month until we get to land use of this work plan.

>> Councilmember Herrera: I move approval, with making it explicit that we want those discussions to happen. Wait a second until I get a second.

>> Councilmember Nguyen: Second.

>> Councilmember Herrera: I really want to compliment parks and rec, though, for the work that I know they're doing with the community to try to find alternatives. I know in the case of the skate park, which has been in the news lately, the parks and rec staff has been outstanding in working with me and the community to look at finding alternative funding. So I think the commission should be dialed in too so that they can also understand those tough decisions you're having to make and how we're having to work through those things.

>> Thank you.

>> Mayor Reed: A couple more things, I don't know what RCS strategic plan is, probably should, but that's on December.

>> Yes, moving forward it's a bit of reorganizing and understanding more of the outcomes that RCS wants to meet. It's in relationship to the inability to run some of our community centers.

>> Mayor Reed: What is RCS?

>> Oh, recreation services.

>> Mayor Reed: RCS? Recreation and community services?

>> Yes, correct.

>> Mayor Reed: PRNS, I'm with you now.

>> Parks, Recreation, and Neighborhood Services.

>> Mayor Reed: I thought we had something dint. We have PRNS marketing/branding. I think that's a waste of time and money but what is it about?

>> I can bring that forward. It's an initiative that's been moving through the department for the last couple of years trying to focus more on what the department brings as a deliverable to the community and how we brand that and how we make that important to the community, and so they understand where to find that information, as well.

>> Mayor Reed: How much money are you going to spend on it?

>> I do not have that answer for you right now.

>> Mayor Reed: That's -- to me, branding, when you're trying to survive, is not really all that important. Because the community loves what do you, and very much appreciates the services. And trying to do a branding thing when you're budget is being cut by huge amounts is just the wrong place to put your efforts. Councilmember Herrera.

>> Councilmember Herrera: Unless somebody -- unless another partner wants to pay for it.

>> Mayor Reed: Well, yes.

>> Councilmember Herrera: And there are some entities like the skate park where we do need branding and marketing, and we're finding outside partners to pay for it. So in that case I think there is a true public private partnership kind of thing.

>> It's centered around partnerships, as well.

>> Mayor Reed: Sponsorship are good. But if you are trying to figure out a new logos for the department --

>> Councilmember Herrera: But not us pay for it.

>> Mayor Reed: -- That's not very important when your ship is sinking. Like the kind of cuts we're looking at for PRNS as a result of next year's budget is catastrophic in many ways and branding isn't going to change that. But if we can get others to spend money to brand, and do that, well that's a different issue.

>> It's always part of our strategy to find others. Working very hard at that.

>> Mayor Reed: The other thing is it's not clear from here if you're engaging the commission on can we find grants to help us do things or how can we find partners and whether or not that's even a role for the commission.

>> It is. We bring for instance reuse. We bring a report to them on a biannual basis and talking about the partners that have come forward, some of the reuse agreements that we've done some of the sponsorship activities that have come forward. So that's always part of our discussion. We are just centered to find people to help us do things we do for the public we're centered and that and we'll get this on the agenda on the commission's agenda every month and you'll see it there.

>> Mayor Reed: I think they should see the presentation that Jennifer Maguire made to the council a week or so ago. And what the implications are of next year's shortfall are on all the budgets as well as the PRNS budget because there's just no way to hide from the fact that we've got a really big problem next year.

>> Excellent point. I'll bring that up tonight when we meet with the commission.

>> Mayor Reed: Okay, anything else on this? We have a motion to approve with the modifications --

>> Councilmember Oliverio: Mayor, I would just throw out the option to the commissioners, you know with a 100% budget being gone or 80% of budget gone, how is it that the commissioners see that we could still retain services by doing things differently? And they as park advocates or community center advocates need to be able to have an opinion. But to think it can stay the way it is it won't be able to so hopefully they will come up with some creative ideas on how we could do that.

>> We will we will work towards that and we have been.

>> Councilmember Oliverio: Thanks.

>> Mayor Reed: All right the motion is to approve with the modification to add the budget integrate the budget into the discussion. All in favor, opposed, Mr. Wall did you want to speak on this one? I'm not sure.

>> David Wall: What I would like to see is, more of an update to the organizational structure, PRNS, with reference to consolidation of position and the span much control. These type of organizational structures are imperative for you to make your decisions long-term. They should also be afforded to all the pertinent committees especially CED, neighborhood services and Rules simultaneously so the public can also give input as to the organizational structure and span of control. The overall management structure of the city has to change during this and I think there's a lot of cost savings and a lot of preserving of parks function if you start adopting what I've just spoken about. Thank you.

>> Mayor Reed: All right, that concludes the public comment. We have a motion to approve as modified. All in favor, opposed, none opposed, that's approved. Our next item, Councilmember Liccardo, I don't think, is here yet so I'm going to wait until 2:30 before we take up his request on the auditor's work plan. We can move ahead slightly to H-1-B that is the memorandum from Councilmember Rocha, regarding an ordinance to allow the city to exercise discretionary review for new retail uses. Councilmember Rocha is here. Want to speak to that memo?

>> Councilmember Rocha: Thank you, mayor. I did have some comments that I wanted to share, and if you read the memo there's a little bit of a description about how I got to this point in introducing this memo. As you may know, the former home expo building has been vacated for quite some time and Walmart is moving in at Almaden expressway and highway 85. The building is over 90,000 square feet. The last page of the memo it shows an aerial and how close the residential uses are to the back of that building. So also, I'm sure you're aware of, it's been existing retail use that can move in right under the original approval, no public review no professional really review. That's a concern. I heard from plenty of residents, they sent me this post card pointing out that they are concerned about the traffic impacts, quality of life impacts noise impacts a number of different issues. So we held a community meeting out there and it was pretty well attended, a lot of people pretty concerned. The planning director, Joe Horwedel attended O&M answer to answer any questions. I thought it went very well. A number of their concerns were addressed. Specifically 24 hour uses, alcohol sales, access through charity view, all that they were quite comfortable that the existing regulations are going to hold and some of those impacts will be minimal and any new uses beyond what's approved of course will require a conditional use permit or additional review. So that was good for them. But the additional issue that they have is that how can the public have no input whatsoever or professional staff have no input whatsoever? This is clearly an intensification. Home expo was more or less kind of a home improvement kind of viewing area, it's not like a Home Depot. A Walmart is going to bring much more intensification, whether it's customers, whether it's deliveries, whether it's traffic. So I was not comfortable telling these residents that were there telling me they had concerns about the effects to their neighborhood that we can't do anything. We can't do anything for this use. Walmart's going to move in under the existing approvals, that's fine. But in the future we can do something. That's why I suggested adding to the work plan, considerations for at some point the council to decide whether this is a priority for them to direct staff to look

at it. And I was not prescriptive. My intent was to allow professional staff to make the recommendation on best way they saw that we could add some review. And my intent is not to have this go to council. We can have a planning director's hearing, they can review it and or an appeal to Planning Commission but at the end of the day my interest is not to have this go to council. My interest is that if there is an intensification or a significant intensification the planning director can make that determination. If there is none and it's the exact same use then no need for additional review. I'm quite aware of our need to make sure businesses are able to move in and out as fast as they need to be successful and I don't want to slow that down. Keep in mind that 70,000 square feet the threshold I put I'm not wedded to that. The size of this building was 90,000 square feet. For example the south hall, the tent for the convention center is 80,000 square feet. That is large. So there's not going to be a significant amount of these examples in my opinion. Most of the businesses, the smaller ones that move in and out quickly, will not be affected, if ever. It's those large, big box retail uses that I have an interest in making sure that the community has a voice. Just as a matter that professional staff have an opportunity to determine whether or not we might want to impose some existing mitigation or requirements. With that, I'll leave it at that, and if you have any questions I'm happy to answer.

>> Mayor Reed: Okay, I don't know if we have any questions or not, but we do have requests from the public to speak. Might as well take that up front and see if there are any questions. Joann Gray, and Jolene Peyton, come on down.

>> Thank you, mayor.

>> Mayor Reed: Just pull that microphone down a little bit. There you go.

>> Is that all right?

>> Mayor Reed: That's fine.

>> My name is Joann gray. I'm a resident of the area where Walmart is going in and I think Councilmember Rocha spoke beautifully to what our concerns were and we really would like -- we realize we don't have much of a voice now. But we'd really like to help other communities have more of a voice, and more say in what happens to their community. I'm not intrinsically against growth. I know we need it. But I think the fact that the community, the people who live and are immediately affected have no voice could possibly be addressed better. Thank you.

>> Mayor Reed: Darlene Peyton.

>> Along the same vein. I would like to see the city, when you have a large building such as this when a tenant changes, the impact to the surrounding area can be drastically different because this tenant can be totally different than the one that was in there before. And when the initial development goes in, we had a lot of say in what happened and what didn't happen. Now we feel like we have no say, and we're kind of at the mercy of whatever's going to happen is going to happen. And you know we can't just pick up and move to a new area, you know, I'm retired I can't afford to do that. So I would like to see the city on a going-forward basis when you have a large entity like this, that there be a little more, you kind of treat it more like it's a brand-new development. Because the impact is going to be drastically different than what we had before. So I would like to see this get passed. Thank you.

>> Mayor Reed: David Wall and then Carol joyall.

>> David Wall: This goes to the issue of government showing a callous and intentional disregard, not only for the lives of these people that just spoke but more importantly their property values. Now, this whole process is just nothing but steeped in skulduggery. Because it should never have been allowed to happen. Expo is a high end home development room development type building. Very few people ever were in the parking lot. Most of the people were from that best buy or whatever that was in front of it. You haven't even taken into account you are creating another one of these Santana Row nightmares for the freeways, especially with Almaden exit off of 85, I believe it is. It is going to be backed up all the way around. This is a nightmare project, just like everything else this city does. It just does things for greed and avarice under the guise we need tax revenue, versus

consolidating city services and just moderating growth. It only grows so much. This would have been a perfect opportunity for you to provide open space for your, as it's designed, the cursed habitat plan. Just bulldoze this whole thing. But no. You're going to continue to cause pollution, congestion, but the deminuation of property values as a direct and proximate cause of this, these people do have a voice, a very concerned voice. And you should be concerned about that.

>> Mayor Reed: Carol Joyall and then Brian Jackson. We're going to need a -- there you go. Or can you just hold it.

>> That's better. Mr. Mayor, members of the council, I rise in support of my councilman's proposal. It's something, again, we should never have had to go through in this neighborhood. It will affect our property values. Our peace and quiet, and our safety, as there's a pedestrian bridge very nearby that children cross and there's a lot of people right in the area. I just think it's much better to avoid a situation like that. Our neighborhood is really up in arms and wonders why this could happen in the first place. Thank you.

>> Mayor Reed: Brian Jackson.

>> Mr. Mayor, I also rise in support of this. My main issue with this is, the reason I like it. Is it's a quick and easy way for the council and the city to perform a sort of a pseudo EIR on large project changes like this. Nobody has to pay for an EIR unless the staff determines that's really what's needed. But the problem of what happens here is an EIR was done whenever they originally built the thing, whenever it was, 12 or 14 years ago, and now with the change of use nothing was required to take a look at it again. And say, with the changes of use of the past X number of years, is -- have things changed enough to merit changes in how we view the development around there? And I think this is a really great way to let the staff and let the council, if necessary, take a look at the very few instances where this may come up, and change the neighborhoods' world without them having any say whatsoever. And so for that very reason I'm really in favor of this. I think it would be a good idea. All I think it fits in very well with the 2020 and 2040 plans of allowing the communities have a lot more say in making it all work a lot better. Thank you.

>> Mayor Reed: Thank you, that concludes the public comments. Councilmember Rocha, do you have something to add?

>> Councilmember Rocha: My last add is when a number of the residents asked me, at this point why should we be supporting and engaged in this because this isn't going to help us. At that point it was a good question, it kind of stumped me, I thought about it, well, what if Walmart goes away, that building will still be there and there may be another use coming in and whether it's as high intensity use as Walmart, is unlikely, but still for the future of that site I think it's very important. So thank you.

>> Mayor Reed: Vice Mayor Nguyen.

>> Councilmember Nguyen: Thank you. And Councilmember Rocha thank you very much for compelling presentation. Since we have the assistant director of planning here, Laurel Prevetti I was just wondering if I could ask some questions. Laurel, how many, do you and tell me how many of these big box freely stories we currently have in our city?

>> Laurel Prevetti: I don't have the precise number but I imagine if you will all the various home improvement stores that we have, the Lowe's the Home Depots that are throughout our community, we also have very large grocery stores. I'm not sure if they quite got up to the 70,000 threshold but we do know we do have some Safeways that are close to it. So imagine those types of stores. And then the possibility for warehouse type buildings to perhaps change their occupancy to retail and not triggering discretionary review under our current rules. Imagine if you will that we do have such buildings throughout the majority of our council districts.

>> Councilmember Nguyen: And then another question is, if this report that goes through how much would you imagine staff would have to work in order to come up with the criteria in terms of you know using discretion to make sure that we have the type of retails that we want or the type of retails that Councilmember Rocha is somewhat opposed to?

>> Laurel Prevetti: Yes, we would conduct some form of workload assessment if that's the will of the Rules Committee or the full council later on. Just from our experience crafting similar ordinances, we would need to do outreach, both to the community, as well as to our business entities, to get their input and then look at some different openings for council consideration. So it would probably take us a few months to actually put together the ordinance. And then bring it forward for your consideration. And as the councilmember mentioned, this is not currently in our work plan. So to the extent that council wishes to align or change our priorities, we certainly would be happy to handle whichever ordinances the council prioritizes for us.

>> Councilmember Nguyen: Thank you and then just one final question. Hypothetically should this proposal go through and we have an ordinance such as this how do you imagine this is going to affect you know our goal of bringing in big box retail so we can continuously generate tax revenue?

>> Laurel Prevetti: I think San José is really at the point where we're trying to balance economic development, get the sales tax revenue our city really needs, we know we continue to be underretailed and balance that with quality of life issues, quality of design as well as neighborhood desirability. I know with the office of economic development we are trying to attract more businesses to the city and do so in the right places. So I think what we would want to do is make sure this ordinance should it be approved ultimately can help us attain our economic development goals while at the same time take care of our neighborhood needs, as well. So it is definitely going to be a balancing act on this one.

>> Councilmember Nguyen: Thank you.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: So Laurel, as you talked, San José's under-retailed. Can you give any statistics on that?

>> Laurel Prevetti: Yes, I understand the latest report still puts us at about 20 or 21% underretailed. What that means is San José residents leave San José to do their shopping at neighboring communities. So we still have the capacity to add more retail jobs and try and bring our residents to really shop San José.

>> Councilmember Herrera: And when we're -- and we're about to launch a shop San José campaign, say that three times get the word out because we want people to shop in San José. So what kind of revenue would that mean for the city which of course then that's how we pay for services.

>> Laurel Prevetti: Yeah, I'm sorry, I don't have a handle on that.

>> Councilmember Herrera: Sales tax revenue?

>> Laurel Prevetti: Right, it would be exactly, sales tax revenue, to the extent our buildings are filled and we will be getting the property tax revenue, or our appropriate share, again, depending upon location, redevelopment project areas all of that. So having businesses be vibrant, having our buildings full definitely helps the city achieve its revenue goals and the fiscal goals.

>> Councilmember Herrera: What about retail, are we all filled up, or we have some vacancies out there?

>> Laurel Prevetti: It varies by -- no, not at all, we still have vacancies, yes, we still have opportunities for businesses to move to San José.

>> Councilmember Herrera: Okay, so I really appreciate Councilmember Rocha's memo and the community that's come today to talk about that. I have a little bit of concern about unintended consequences because it -- I don't think that -- it seems that some businesses will be probably more welcome than others in terms of big boxes and I certainly wouldn't want to send a chilling effect to businesses out there who we really want to come to San José to do business. So I'm a little bit concerned, you know in terms of the -- in terms of this having maybe a chilling effect on those. And as I chair economic development we're trying to find every way we can to bring

businesses into San José. And make sure that they know they're welcome here and that they do business here, so those are my concerns.

>> Mayor Reed: Without getting into the merits of the interesting debate on the impacts and things we do have a process for ordinances and I think that's the appropriate way to deal with this, until the council modifies the work plan, our staff is busy working on the dozens of assignments that have already been given. But I anticipate that council will take up looking at the work plan in February. And this could be put high on the list, if the council wanted to do that, and I think that's where we just refer that process, that will give staff a chance as they prepare for the February discussion, analyzing the amount of work and effort on all of those is just part of the preparation for that. So that would be my recommendation, Councilmember Liccardo -- I'm sorry -- Oliverio, he was here a moment ago.

>> Councilmember Oliverio: Thank you, mayor, the other Italian. Laurel, so I'm looking at the map here that's on the memo. There's difference in land use here. I see land zoned for commercial and land just abutting it, as we have in so many places in San José, that's residential. Now you as the professional planning staff do you determine what retail use might be more popular? So you know, Fred's comic bookstore has X amount of people but you know Tom's bridal shower shop is different. Is that your job in the planning world to figure out which is going to be a more popular store?

>> Laurel Prevetti: Well we look at I think it comes down to traffic and other characteristics of the retail. So we use national standards to derive our trip-generation rates, et cetera. And I imagine back when we did this analysis, we made appropriate assumptions given the applicant that was before us. You could see just from the aerial that's contained in the councilmember's report, the landscaping and likely the walls that really try and separate the retail on the East from the residential to the West. So those are all factors that we would consider, at the project level, and we do know that when we rezone property that it's -- that we can't determine specifically at a those tenants are always going to be the same over the life of our buildings. And as San José continues to mature we expect our buildings to be repurposed to other similar types of tenants. But sometimes, some are more popular than others. And I think that's the policy question that's before us, is should we create an opportunity for

the appropriate body to consider that, or are our processes sufficient. So I think that's the question that we'll bring back in February to the council, as it does its priority-setting.

>> Councilmember Oliverio: And this loading dock that's here, apparently it's been there the entire time.

>> Laurel Prevetti: Yes, uh-huh.

>> Councilmember Oliverio: So whoever has been living behind this zoned commercial district has had a loading dock for entirety of the time the building's been built?

>> Laurel Prevetti: That's correct and typically the permit conditions that were placed when this building was constructed would still run with the land. So if there were restricted hours of when deliveries could happen or not happen those would then prevail as the new tenant moves in.

>> Councilmember Oliverio: And then if the tenant wanted to have extended delivery hours that would need some type of approval from planning director or Planning Commission?

>> Laurel Prevetti: That's correct.

>> Councilmember Oliverio: And the benefit of that is a business could plug in to what was zoned for and operate?

>> Laurel Prevetti: To have certainty as to what those rules are.

>> Councilmember Oliverio: I know as far as the work plan, that could be an addition, but I see other items that disrupt neighborhoods a lot more. That's the subdividing of lots and trying to put X amount of units where there used to be one single family home and I think that's much more disruptive to neighborhoods all over San José. I'm sympathetic to the folks that live on Galea drive and cherry view but it's clearly a commercial zone. We had a

grocery store in my district close for nine years. They wanted a new grocery store, then everybody was reminded there was a delivery truck, could they deliver through the front door. That's not possible when you are looking at pallets of goods. I appreciate Councilmember Rocha's sincerity and caring for the residents and the residents maybe not wanting to see this transpire. But where else do you put retail? It's next to Almaden expressway, it's next to highway 85. Again, very sympathetic with the folks who live on Galea drive and cherry view, but you know, that war was lost when this property was built and became retail commercial. And you know, being a vacant site is not doing anything for the city and I'm sure your residents would probably care for a police officer to drive through your neighborhood everywhere once in while and you'd probably care for a pothole to be paved. That's our business model in the city we have to drive tax revenue to provide you services. A vacant building is not going to provide that. And I just don't see it being the -- my number one priority on the work plan. We recently had a vote on the work plan and chose some items, check cashing was not my number one priority in regulating the city, where I thought we should have had ordinances that helped businesses open up or with the release and selling of city property make it much easier. So appreciate the time. Thank you.

>> Mayor Reed: Okay.

>> Councilmember Rocha: If I may can I ask a question?

>> Mayor Reed: Councilmember Rocha, sure.

>> Councilmember Rocha: I understand you had a chance to talk to the director of Planning, Joe, about this?

>> Yes.

>> Councilmember Rocha: And did he talk to you about the traffic analysis that was done on the original home expo site and the trips generated there and how the Almaden ranch project which is across the street did their traffic analysis and for that one they had heard that Walmart was coming in or new and for that they used the Walmart trip generation, and the significance, sorry I've forgotten them.

>> Laurel Prevetti: I don't have those numbers with me today but I'd be happy to help your office respond to questions or work with the community as Walmart moves in, if there's something code enforcement can assist with, we want to continue to be able to provide the services that your residents need.

>> Councilmember Rocha: So the trip generation was not a little bit, it was significantly higher. So I want to make that clear, that there was some basis to this concern here about the increase in intensity, in intensification. Thank you for taking the time to consider this, and I just want to remind you if you've had a chance to read through the memo, again, that nowhere in the memo did it say deny. It's public review and professional review. So public input and professional review is all that's being asked. No denial, so a chilling effect or shutting down retail or denying this use. This is just about more review. And if there's any additional need for any additional permit conditions necessary. Again, no denial was mentioned in this nor by myself nor by any of the residents. Thank you.

>> Mayor Reed: Vice Mayor.

>> Councilmember Nguyen: Thank you. I just want to make a motion to defer this to the.

>> Councilmember Herrera: Second.

>> Mayor Reed: Motion is to send it to the February session, staff will bring it back then.

>> Councilmember Rocha: Thank you.

>> Mayor Reed: All in favor, opposed, none opposed, that's approved, that's what we'll do. Back to the item H-1-A the addition of incubator and entrepreneur center status to the City Auditor's work plan. This has been to the committee before and we deferred taking action until after the Community and Economic Development Committee could have its hearing September 26th regarding the transition plan for the incubators. So I think

perhaps we ought to start, and some of you are on that committee like Councilmember Herrera who chairs it, but the rest of us may not be up to speed at what happens at that committee. So staff can just give us a summary of where we are in terms of the transition plan work that's underway.

>> Mayor, I'd be glad to do that on the transition plan. We -- the presentation at the CED committee was mainly to -- that was actually on the -- on CED's work plan prior to Councilmember Liccardo's initial inquiry or request to put the incubators through the City Auditor's process. But we updated on the entrepreneur center and on the three incubators on the latest data and latest financial recordings and we did report on the transition plan. We are following your lead on the memo that was written for the -- this committee for rules, that we would still present to CED the transition plan on November 28th, and take it to council in December. During that time I've been in discussion with both the San José State research foundation and Humboldt sponsored research foundation which obviously oversees the entrepreneur center. And obviously -- I shouldn't say obviously -- the San José State research foundation oversees the three incubators.

>> Councilmember Herrera: Can I add to that.

>> Mayor Reed: Councilmember Herrera who chairs the committee.

>> Councilmember Herrera: Yeah, and I appreciated the update there, and I just wanted to add that Mary talked about the biocenter in particular, a little bit more challenging because there's only 11 months left on the lease there. So there's going to be a short ramp-up time for that. But some of the positive things about the biocenter that there's still a national need for small wet lab space and they're working on expanding partnerships. There's a lot of support from the San José State president, working with partners, existing and new, increasing university involvement, faculty involvement and student involvement, those are some of the things they're working on. Some of the examples of industry sponsorship was Bayer health I guess has been involved, and so there really is a real effort and positive working. It is going to be challenging, with the U.S. Mac and EBC center there is a lot more ramp up time because we have got a couple of years, so that one is going to -- it will be a little bit easier to actually move forward on those. But it's the same kind of program looking at for partnerships. Looking at more

involvement with the university and those kinds of things. Also the suggestion and we probably need to bring this to CED is have the incubators be part of the community and economic development goals, they are really not on the list, per se, and we probably should think about getting -- extending that and getting them on the list as far as moving on with economic development.

>> Mayor Reed: I'm going to talk a little bit about the budgetary background. I think it's an interesting discussion about whether the incubators were good bad or otherwise. But it's pretty much irrelevant because we're getting out of the incubator land board business because the agency is not going to have the money. And the transition plan of course is a transition from agency support to no agency support, just as a fact of life with the budget situation that we're in. I think there is a significant question about whether or not, if the state legislation is upheld by the Supreme Court, whether or not the oversight committee, the successor entity whatever it is, is going to be willing to pay the rent on the facilities, even though the agency budget has it in there for the following year. And so I don't know if the City Attorney is in the position to explain how the water fall would work, whether or not the oversight committee would have the able to say to the landlords we're not paying you anymore, get in line with everybody else, you're in the water fall, or have they been given some sort of priority with the state legislature?

>> City Attorney Doyle: I know of who leases that are currently in existence. Both start current leases and one expires I think in 2012 and the other I don't have the exact date, I don't have the information in front of me. As you may remember, the council and the board approved those as part of the enforceable obligations list or on the list of enforceable obligations. That is now going to assuming that the law is upheld, it would be something that we would continue in existence, if the oversight board were to direct to get out of those obligations, before expiration dates I think we'd have the typical fight with the commercial landlord or renegotiation with the commercial landlord to try to -- in terms of breaking a lease. So that's sort of we've looked at that briefly, I just don't have the exact dates of when the expiration dates are.

>> Mayor Reed: Well I think the important point is that any transition plan cannot assume funding is going to last, even through end of the year, or for two or three years. That given the fact that some of our creditors have higher priority than others and some of them may seek to improve their priority, like J.P. Morgan or somebody, that the

oversight committee or the follow-on organization, we're going to have to come up with a better name than that, whatever it is, may be in a position to choose between creditors. So I think it's a mistake to assume there's going to be two or three years more funding for the E center for the leases. We must assume that it may or may not go away and the landlord should also assume they're not necessarily going to get paid until they get paid out of the water fall, in which case they may want to consider renegotiating the leases with San José State university research foundation or the individual tenants or something rather than just assuming that the Redevelopment Agency funds are going to support that lease for the E center. So that's part of the complications of coming up with the transition plan. But there's not a lot of time left for transitioning. Councilmember Herrera.

>> Councilmember Herrera: Point well taken mayor and I just wanted to say that that was also expressed by San José State research foundation. They do have a desire to become leaseholder upon the lease termination date and want to make a smooth transition. I think it's an important point that the master lease is not with them but with RDA. That is who negotiated the original lease and I think Councilmember Liccardo has made the point I think I've heard it before, perhaps the lease rates that were negotiated weren't the most favorable. There could have been a better job done in terms of getting the best lease rates. But that certainly isn't the fault of San José State research foundation who then had to go and work with the lease risk they would have gotten, so they really can't do that negotiation right now. But it's certainly at a point where if there's not going to be funding happening I think they're interested in stepping up they said they want to do nap one of the other things I didn't mention in terms of their plan transition is they gradually want to increase the rents. Just like we are not paying market value or we're paying over market value, in terms of rent to their clients, they're looking at those and maybe thinking about increasing those to help with this transition. And I think that -- I think those are -- yeah, those are the other additional things I wanted to say about that.

>> Mayor Reed: One other thing about the leases, City Attorney, you talked about two leases, those are the master leases on the two buildings. What about the arrangements for the individual tenants? Am I correct those all run to San José State university research foundation not to us?

>> City Attorney Doyle: I believe we have a sublease.

>> Mayor Reed: The people who provide the services, the managers or directors or whatever they're called they don't work for us?

>> City Attorney Doyle: No.

>> Mayor Reed: Okay.

>> City Attorney Doyle: But everybody is subject to the master lease.

>> Mayor Reed: The master lease goes away, everybody loses --

>> Councilmember Herrera: That's right.

>> Mayor Reed: Any other questions? Councilmember Liccardo is here he's got a memo you want to speak to your memo?

>> Councilmember Liccardo: Yes, if I could, my apologies, because it appears an earlier draft of the memo made it into the final form, and there's some mistakes in there, and I hope that those will be overlooked, at least to get the substance of the modification of the recommendation because clearly the ground has shifted in terms of the facts as we've learned more since the 2007 report has come to light after the 2009 report came out and we've had the benefit of a hearing and certainly additional information's come forward. I would submit to you that the question of relevance would be easily resolved if the question was simply whether or not we were going to contribute or continue to contribute to support the incubators through with RDA funding. That is almost certainly a forgone conclusion. What is a more important question seems to me for us is the transition to whom. And that is not a question that we've really delved into and frankly I think it's a question that requires independent scrutiny. Independent perhaps the ordinary means of supervision that we've had in past years with --

>> Mayor Reed: Let me just stop you right there, because I think that's the crux of one of my questions in terms of the transition. The transition that I've been referring to is the transition of us getting out of the landlord business. As far as I know we're not in the management business.

>> Councilmember Liccardo: We're not.

>> Mayor Reed: The transition I've been talking about or thinking about is we get out of the lease pretty simple, we don't pay anymore.

>> Councilmember Liccardo: Except mayor there are two subleasing sponsorship operating agreements that are operational here. This essentially was a marriage. RDA was clearly not in the management business but RDA was absolutely a party in the transactions. In fact these agreements called for RDA support of these incubators. And now the city and RDA are looking backwards, saying we have now invested well over $30 million in this program of incubators. And the question is if I could just be allowed to finish.

>> Mayor Reed: Well, I want to try to get to the point of this, because the subleasing agreements you talking about I am not familiar with, those are -- is that with the --

>> Councilmember Liccardo: They are between RDA and San José State university research foundation. One signed in December of 2009, that's operative for one site, and for the biocenter, the one signed in 2004, those are the two operating --

>> Mayor Reed: Okay so one for each building.

>> Councilmember Liccardo: Yep.

>> Mayor Reed: And what about the -- there's some other folks in this E-center building Humboldt state and other agencies. Are they subtenants to this sublease or is it a separate deal with us?

>> Mayor, they have a separate sublease with us. With the agency.

>> Mayor Reed: With us.

>> Councilmember Liccardo: That's not the subjects of my concern.

>> Mayor Reed: Sorry to interrupt.

>> Councilmember Liccardo: No no I understand. So -- and I appreciate these are complex relationships. But if we view this as something of a marriage between the RDA and the San José State university foundation, the question is even after the RDA withholds child support, the question is are we going to give the child to what might be a neglectful parent, or is there another option? And I'd submit the evidence is clear from the past reports that we have seen that have previously not been viewed by the council both in 2007 and 2009 there is serious reason to question whether or not we should allow the incubators to be managed by the San José State university foundation, why we shouldn't at least sit down with president Qayoumi and the new provost, whoever that may be, and ask the question, is there a better way. Certainly we were told --

>> Mayor Reed: I have already started that discussion with the president.

>> Councilmember Liccardo: Great, and I hope we can continue that. We were told, I say we but the council never heard this but the Redevelopment Agency contracted with the developer in 2007 who told the Redevelopment Agency get a separate organization to run these. The San José State university foundation and the RDA are not appropriate to be running these incubators and I described some of the details of that report on page 2.

>> Mayor Reed: I'm sorry I got to interrupt you again. Want to make sure I'm talking and thinking down the same line you are.

>> Councilmember Liccardo: Sure.

>> Mayor Reed: What is the child here that we're going to give away?

>> Councilmember Liccardo: The children are the incubators.

>> Mayor Reed: But the children do not belong to us as I understand it they are not us to give away. We have a lease which we have the ability to stop paying on I suppose stop paying on or give away.

>> Councilmember Liccardo: And we have a co-sponsorship operating agreement.

>> Mayor Reed: I'm not familiar with that.

>> Councilmember Liccardo: I'd be happy to give you a copy of that.

>> Mayor Reed: That would be helpful.

>> Councilmember Liccardo: These have been -- these are public documents certainly. So clearly the RDA has an interest in this. Even if you say the RDA spigot turns off there is an agreement in place. And it seems to me at the very least we have a moral argument that after 30-plus million maybe $35 million worth of investment we should be entitled to a couple of meetings to discuss with our partners the San José State university foundation whether or not there might be a better means to provide a better return for everybody particularly for the city frankly I don't believe has gotten a very good return out of this investment.

>> Mayor Reed: Shouldn't that be part of the transition plan discussions?

>> Councilmember Liccardo: I agree. But the question is, who's going to do the fact-finding? Are we going to continue to rely on San José State University Foundation to provide us glowing reports of jobs data, of retention data which as I've demonstrated in this memo has frankly been false and blatantly inflated or are we going to ask an independent source to be able to look at this objectively, someone who's not attached to the outcome, and provide us with useful information, and perhaps with San José State as well because I visited the president as well and frankly, they hadn't had any information about the 2009 report. I'm talking about the one that got released in August, until I brought it to them. It's not clear to me that information is flowing well within that organization or within ours and frankly people at the top in both organizations have been operating somewhat blind of the facts because the facts haven't been getting to us and that's I believe the need for an audit here.

>> Mayor Reed: I'm sorry Sam --

>> Councilmember Herrera: I want to confirm that it's Chaven report in 2009, and Robbins report in 2007?

>> Councilmember Liccardo: That's correct.

>> Councilmember Herrera: Those are the ones you're talking about.

>> Mayor Reed: So Chaven was '09, Robbins was '07, okay.

>> Councilmember Liccardo: And truth be told, the Robbins report was a strategic plan, it wasn't a in any way analysis to scrutinize the performance. Explicitly said he wasn't doing that and gave a glowing report about the fact the incubators were a wonderful success. Of course Robbins himself was executive director I believe of two of the incubators at the time.

>> Councilmember Herrera: Didn't he start the software business incubator, and also the environmental business cluster?

>> Councilmember Liccardo: Yes, he actually started two of them, and was very explicit about the fact that neither the RDA nor San José Surf as currently organized were the most effective organizations to manage these incubators, and gave explicit recommendations about how to move off that model back in 2007. We didn't take that advice then. 2009 we have even stronger words from an independent set of consultants about the shortcomings. And clearly the information is clearly at odds with what the council and the public have been told and we're still not heeding the advice. Now it's time I think to go to an auditor and say can you tell us the straight scoop so we can make an intelligent decision about this transition?

>> Mayor Reed: Any other questions? I've got requests to peek. Councilmember Herrera.

>> Councilmember Herrera: I have questions either way I have questions.

>> Mayor Reed: Why don't we let the people here to speak on this, Mary Sydney and David Wall.

>> Good afternoon, councilmembers.

>> Mayor Reed: Squeeze the handle it will slide up. Handle of the stick.

>> This one?

>> Mayor Reed: Yes. That works, too.

>> Okay.

>> Mayor Reed: Either way you get it.

>> Gosh, I almost don't know where to begin. So let me start by apprizing the councilmembers, the committee members that President Qayoumi and I took a tour of the biocenter just this past Monday. He hadn't seen

it. We've certainly had some preliminary discussions about the incubator program but after touring it, he was of course impressed with the facility, the quality of the services, et cetera. And just I'd like to convey to you that he is committed now more than ever before to sit down and figure out how do we make this transition work, beginning with the biocenter. And he understands the short time line and the ramp up that's required. And in fact he did a follow-up meeting just yesterday with his -- a couple of his vice presidents to say let's figure out how we can do this. He thinks that the university has a role to play in the economic development of the region and he would like to get the academic units even more engaged than they have already been and he's saying let's figure out how we do this. So I just wanted to convey that information. That pertains to all the incubators and we begin with the biocenter. And with regard to whether or not the committee decides there needs to be an audit the research foundation is happy to provide whatever information you feed, request, past, present, whatever. And we've always been happy to provide that. So nothing there has changed. With regard to Councilmember Liccardo's recent memo of October 5th, I must say I'm really taken aback by the content of the memo. Because there are so many misstatements and inaccuracies, and so to me it sort of reflects a fundamental misunderstanding of our organization and how we are structured. So I'm not sure what information you're being given or what your source is. But let me just clarify that the research foundation manages between five and 600 individually funded managed programs on behalf of the university. The incubator is one of those hundreds of programs. And so my staff in our corporate operation is the business infrastructure. So the accounting, payroll, audits, you name it, all of that is managed out of my organization. We don't individually manage any of those programs. The managers of those programs are responsible. So in the case of the incubators we would rely on the incubator management team for any data that's provided as even with the information presented at the economic development committee. All of that comes from the incubator directors themselves. So in the memo when it refers to the research foundation provided this data, and the data may have been exaggerated or whatever, we only can pass on what we are told. So we passed on what we were told by Jim Robbins, by Melinda Richter, by Barbara Harley and then her successor Omar Menson. Just to clarify, the research foundation is not separate from the incubator directors. They have been either employees of the research foundation or contractors of this foundation. With regard to some of the other comments, and maybe it would be best if I let you ask me questions, but for example, there was the Jim Robbins strategic plan. That was, in my opinion, frankly, a little bit awkward because it's called a strategic plan, in my experience strategic planning occurs with at least your management team and sometimes

your staff. In this case neither happened. So that report was done with Jim's consulting firm in a vacuum. I was not involved, the incubator directors were not involved, I asked hem. It did go to the RDA and we did have discussion. We agreed that a number of the ideas could be good ideas, but they required funding and that's about as far as it went. So again, it was a strategic plan and would I put that in quotes. With regard to the Chabin report, that report was done with very limited input from myself and from the incubator directors. And in fact, once we got the final report, months later we kept asking where is it, where is it, and when it finally came there was literally no discussion with the Redevelopment Agency and the explanation for that may well be that there were staffing changes being made and the layoffs were starting to occur. So that report was never discussed with the research foundation. And so given that the RDA wasn't paying attention to it, it was their report. We did not invest time in trying to validate the numbers and go back and recast how the consultant came up with what. Because we didn't use it. Further, there were parts of that report that I noticed did not even speak to issues that I knew were underway. She never asked me about. She spent maybe an hour and a half with me. So there's a lot of credence being given to these two documents and would I just say let's just be careful before we put too much stock in those. One of the recommendations talked about as Councilmember Liccardo has pointed out the recommendation to change operators. Well, one you could say talk about changing the operator which could be the larger organization and the infrastructure that we provided which was research foundation. But in another way more practical is you change the day-to-day managers. And so in fact those changes were made. And a number of changes were made and some were underway even when the Chabin report was under development. Some of those things were sensitive, they had to do with reductions in force. So I would argue that there are significant management changes that impacted daily operations and services to the incubator programs that were implemented and we are seeing positive results. In fact one of the comments has to do with fundraising. Well the team we have in place now across the incubator programs have done significantly more in terms of fundraising than what we've seen by their predecessors. So I'll stop there and wanted to sort of give you that background information.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you and thank you Mary for coming again. For being available. I've been trying to figure out, and before I start my question I just have a statement to make. I've been really concerned about the request for an audit, this push for a request for audit. In terms of why. You know, what's the priority, what's the urgency, what -- how does this request for an audit on the incubator program, how does that help us? How does that get us information that's going to either maybe recover some money or help us with performance? Because these are performance audits. We look at this in terms of using these scarce resources we have for auditing to help performance, having better performance in programs. We've had many different audits, we've had disability, we've had, you know, our -- I think police, fire, we've had a number of audits coming from our auditor. And I've just been really struggling with how this one, this particular request would rise to the top of the list. How it got there. So it's just kind of in the back of my mind.

>> Councilmember Liccardo: Could I respond to that question?

>> Councilmember Herrera: It's real comment and I'd rather ask some more questions. Could we come back to that?

>> Mayor Reed: It's not at the top of the list yet.

>> Councilmember Herrera: It's not top of the list.

>> Mayor Reed: Just proposed to go on the list.

>> Councilmember Herrera: Mary, could you describe the difference between an incubator program and work -- work space sharing kind of program? It's been alleged that the incubator program wasn't really an incubator program. Can you explain the difference?

>> Sure. The fundamental difference is shared work space really relies on co-location of your startup companies to get some synergy just by virtue of being co-located. They meet in the hallways, they have lunch together and

they share ideas. And so, you know, and that's significant, and there is value to that, and there are organizations structured to provide co-politicians. But the incubator program is profoundly different from just that because in fact when we look at the comments many of which were shared with the community, the economic development committee, when you look at the comments from the client companies what they really value are the services of the incubators. Now in the case of the biocenter clearly the facilities are phenomenal, and weigh heavily in their decision to locate there. But even then it's the small scale wet lab space that they appreciate, combined with the extraordinary services that are provided by the incubator directors. And those services go beyond just day-to-day services for their business operations but the coaching the mentoring the access to strategic partners to venture partners. That whole array.

>> Councilmember Herrera: So You brought up the biocenter and the need for wet space. So when you first opened the biocenter in 2004, it took a while to figure out that you guys needed that wet lab space.

>> Correct.

>> Councilmember Herrera: Could you talk about that a little bit? The startup process was a little bit bumpy when you first got started.

>> Yes, it was a little bumpy. We were given a business plan that had been developed by consultants for the company --

>> Councilmember Herrera: Who wrote that business plan?

>> Actually, it was Jim Robbins.

>> Councilmember Herrera: Jim Robbins? The same Jim Robbins that wrote this report that we're relying on --

>> Correct.

>> Councilmember Herrera: -- to give us information.

>> Correct.

>> Councilmember Herrera: And in that business plan, was there suggestion that you would need wet lab space?

>> I don't remember the magnitude, but it was grossly understated. And so the emphasis was on dry lab, and that turned out to be incorrect.

>> Councilmember Herrera: Okay, and so you had to do a lot of recouping from that point to create the wet lab space necessary for those businesses?

>> Oh, absolutely, yeah, it had a very negative impact on the operating budget.

>> Councilmember Herrera: So that would have been -- made it real tough for you to go ahead and give funding or grants or anything if you couldn't really have a space that would be available to the companies, right?

>> Absolutely, absolutely.

>> Councilmember Herrera: Okay, and how many companies are there in the incubators today in the biocenter?

>> In the biocenter I believe it's 22.

>> Councilmember Herrera: 22 companies. And so within 11 months those 22 companies will have to know what's going to be the fate for them in terms of who's going to manage this?

>> Yes, yes.

>> Councilmember Herrera: Okay. You are the person who hired Melinda Richter, correct?

>> Correct.

>> Councilmember Herrera: And Melinda does what?

>> She is a contractor for the research foundation and she manages the daily operations of the biocenter as well as the environmental business cluster.

>> Councilmember Herrera: And you hired Melinda as not as an employee, but you hired her company, is that correct?

>> Yes.

>> Councilmember Herrera: What is the name her company?

>> Prescience.

>> Prescience. So you hired a company to manage, and Melinda being the CEO of that company, to play the role of managing the biocenter?

>> Yes.

>> Councilmember Herrera: Is that common, to hire a company to do that kind of work, to manage incubators?

>> Actually, a couple of the models we've seen on the East Coast one had a contractor one had an employee and we've tried it both ways in the research foundation and we decided over time it's better to have them as a contractor.

>> Councilmember Herrera: Okay but it's not unheard of to have someone who has a private company --

>> Oh sure.

>> Councilmember Herrera: To run an incubator.

>> Absolutely.

>> Councilmember Herrera: I assume you have a are contract with her?

>> Yes I do.

>> Councilmember Herrera: Is that an exclusive contract that she does business only with the City of San José?

>> No it's not.

>> Councilmember Herrera: Does it state in the contract that it's not exclusive?

>> I'll have to go back and take a look but I know it's not exclusive.

>> Councilmember Herrera: That means Melinda could visit other cities like Seattle?

>> Oh yes, absolutely.

>> Councilmember Herrera: The cities mentioned in Councilmember Liccardo's memo, she wouldn't be breaking any rules --

>> In fact her predecessor Jim Robbins have done the same thing.

>> Councilmember Herrera: Okay, so Jim Robbins was her predecessor?

>> For the EBC, he was her predecessor.

>> Councilmember Herrera: Okay, all right. There's also been a lot -- and the reason why I mention this, is because there's been a lot of discussion, in fact newspaper articles where Melinda Richter was highlighted and these kinds of concerns about -- has been brought up over and over again about this idea of the company and her having a conflict of interest. So it doesn't look to me like there was any conflict. Now, was RDA notified about that? Was somebody in RDA, did they know about this contract?

>> Yes, oh, yes.

>> Councilmember Herrera: Okay. Also, the other question has been about Melinda's acquiring stock in a company with an incubator. Are you aware of that, does she own stock in a company?

>> Yes.

>> Councilmember Herrera: That is now housed in the incubator?

>> That's my understanding.

>> Councilmember Herrera: Did she notify you of that?

>> Yes.

>> Councilmember Herrera: Did she notify the RDA?

>> I don't know specifically that she did. She advised me that she has. I can't say that I was present or anything like that.

>> Councilmember Herrera: And how did that come about? How did that happen that she acquired stock in a company?

>> I believe the company was struggling and was faced with perhaps having to move out of the incubator altogether and she saw a lot of value and wanted to help.

>> Councilmember Herrera: The company was already in the incubator, she didn't have stock in the company and then brought it into the -- to be housed in the incubator program? The company was already there?

>> No, my understanding -- it was already there.

>> Councilmember Herrera: Okay, is the company still there today?

>> I don't know for sure.

>> Councilmember Herrera: It is my understanding it is. It's been there two years, from what I understand.

>> Okay.

>> Councilmember Herrera: Okay, and was there any special treatment that that company's being given? As a result of Melinda having -- owning some stock in the company? Good I'm sorry could you repeat your question?

>> Councilmember Herrera: Is there any preferential treatment that's being given to that company?

>> Not that I'm aware of, nor would I be aware of how she would even do that. Because when you've got clients on site, there's a pretty high level of accountability and visibility for everything that they do. So.

>> Councilmember Herrera: So it would be kind of a problem for her since she runs prescience to be --

>> Yeah, and the pressure is on her to keep it at full occupancy and keep a pipeline for incoming companies.

>> Councilmember Herrera: And let me try -- I need to ask -- Richard, are you aware that Melinda Richter owns stock in a company that is at the incubator?

>> I personally was only aware after that happened.

>> Councilmember Herrera: Do you know that somebody from RDA knew that happened?

>> That I don't know. All along, I did know that she was a contract employee, that her company, Prescience, from the very beginning.

>> Councilmember Herrera: Were you under the impression that it was exclusive to San José?

>> No, I don't -- it wouldn't be exclusive to San José.

>> Councilmember Herrera: Okay. Now there's been a lot of talk about the lack of jobs that the incubators have created and I myself have asked that question on a number of occasions.

>> Sure, sure.

>> Councilmember Herrera: Because I'm very concerned when we deploy funds, deploy taxpayers' money that we get some return on investment.

>> Sure.

>> Councilmember Herrera: That's how I'm used to thinking having run a business so we're always asking that question. What I'd like to know is was there ever -- was that in your contract that you have with the city because you have a operational contract as Councilmember Liccardo has stated.

>> Correct.

>> Councilmember Herrera: So is there a requirement that you provide data or you achieve some return on investment or show results that certain number of jobs have been created?

>> No. Our contract stipulates that our job is to manage the daily operations beginning with everything as routine as administration accounting, financial reporting, hiring of contractors and that sort of thing. Maintaining the sublease agreements. So it's very -- the administrative infrastructure required to manage the incubator program.

>> Councilmember Herrera: So in fact you've never had -- had a has not been a requirement?

>> Job creation data, company creation data and certainly return on investment has never been required of us. Now, in 2009 for the downtown incubators, that lease agreement now has language in it that says something to the effect that they ask that we track current and past tenants, something like that. And that's the extent of it. It's just that general.

>> Councilmember Herrera: Okay.

>> But for example at the time of the Chabin report and the strategic plan from Jim Robbins there wasn't even that requirement.

>> Councilmember Herrera: Okay. And does -- I'm just curious, does the city have any relationship with Mr. Robbins now, Jim Robbins who worked for -- does anybody have an answer to that?

>> Ed Shikada: He has done some work related to -- let's see previously the electronic transportation development center as well as the early work on the environmental innovation center.

>> Councilmember Herrera: Is he currently employed by the city as a contractor right now?

>> Ed Shikada: I don't think so, but I could not say for sure.

>> Councilmember Herrera: Okay. Thank you, Mary and I had just a few comments about the original memo that Councilmember Liccardo submitted.

>> Mayor Reed: Before we --

>> Councilmember Herrera: And then I'm finished.

>> Mayor Reed: Our comments and stuff I have one more request to speak but before we let Mary sit down anybody --

>> Councilmember Herrera: I'd like to wrap up my comments.

>> Mayor Reed: Do you want Mary there?

>> Councilmember Herrera: You can sit down. Thank you very much for answering my questions. I think there's really important points, I'm looking at the first memo because it kind of changed -- the theme keeps changing on the request here. But back at the original memo there was concern about the lease obligations which exceed $850,000 and whether the city should be negotiating to extract itself from any RDA commitments for those future rental payments, I don't think we need an audit to say that if we can reduce these leases, we ought to do it. I absolutely agree with that.

>> Councilmember Liccardo: That request is not my request. The request has been modified.

>> Councilmember Herrera: Okay. I can comment on this though.

>> Councilmember Liccardo: I just want to be clear though, the memo you have with today's date is the request.

>> Councilmember Herrera: This is been in the media and been circulated, I just feel the need to respond to it. In terms of I think we've already handled B, which was talking about whether or not incubator's management worked as independent consultants worked as independent consultants to assess the creation of incubators in other cities such as South San Francisco Seattle and San Diego creates conflicts in retaining companies and encouraging growth in San José. She had permission to do so, and there's been a contract with San José State research foundation that's been in existence, and everyone knew about it, so there is no conflict. I think C is a very important question: What measurable outcome should the council use to assess the performance of incubators like this? That is as we consider pending ventures employing similar or different models such as the San José environmental innovation center what lesson should guide us in our monitoring ensuring the efficacy of public dollars? I think that's an excellent question. I'm not sure the audit is the right forum to get the answer to that, but it should be answered in a strategic plan. So I don't support the audit and I do because I don't think it rises to the -- to a high enough priority and I think that I have a lot of questions as to why we're focusing on this. And I'll leave it at that for now.

>> Mayor Reed: Okay, one more commentary from David Wall.

>> David Wall: I believe a great injustice has been done to Mr. Kite and would I think this entire committee and especially Councilmember Liccardo give personal apology to him and to the RDA. I would also like to hear the Mercury News also apologize. These reports were public records. There were no hidden reports anywhere. The main issue of these incubators is councilmembers over the last 17 years including mayors not paying any attention to what was going on with these incubators. The RDA is just a leaseholder here. The actual business practices and whatnot is a different matter. When we see a councilmember in the throes of an election era and being on a committee for several years and the twilight of the incubator program relationship with the city make a big deal about this, this is only for personal political gain and chastisement should be unbridled and unrelented in his direction. Now another issue that you should look into is the San José downtown business association look at their lease agreements. What benefits are that? If you really want to look into go through district 3 with a vengeance and see if cross revenues to campaign donations if any. I suggest that no audit is needed because there's nothing the auditor can actually do. Because the auditor cannot have the power to go into third party financial structures and get it. All it can do is point out what I've just said as the RDA is above reproach in this. The fault lies strictly with the councils, especially with these council committees in not doing their jobs. Especially trying to gain political hay at the expense of political contemporaries on these committees by pointing the blame at some third party that's not responsible to gain political favoritism especially free press in the Mercury News. I'm abhorred at this whole process and I would still like to see today before I leave this room, personal apologizes being given to Mr. Kite because he's been impugned by this whole process and he's above reproach on this --

>> Mayor Reed: Sorry, your time is up. Any further comments on committee members? Councilmember Liccardo some comments.

>> Councilmember Liccardo: If I could just respond to a couple of concerns. I think the question was whether or not this audit is a high enough priority. And I think it is again important to focus on the recommendation that appears in the memo. Yes the recommendation has changed, so has the state of our knowledge. I by the way don't have all the information, and I submit despite what you might think you don't have all the information

either. That is precisely the crux of the problem. We never got this information. Yes, these reports were hidden. They were not public record and they were never provided to the councilmembers who were making decisions about spending the money. Why do I think it's relevant? Because we have not yet decided exactly who becomes the mother hen of these incubators going forward. It seems to be a pre-decided notion that somehow or another the research foundation should simply continue to inherit them. And it seems to me we don't have any independent source of any answers to the questions, the good questions that Councilmember Herrera raised. The only questions we have or the only answers we have are those answers given by the research foundation. I submit to you the answers we've been getting from the research foundation and yes, the data has been coming through the research foundation, and there's been no, apparently no independent scrutiny of that data by the research foundation and I think that's a problem as well. But that information's been coming from the research foundation to inform the RDA and the council for many years and that's precisely the problem. We don't have an independent source of information. We believe it's a high enough priority having annual financial scan of the CBOs that's listed on our auditor's work plan. That is the numb 2 items on the assignments not yet started. CBOs have received far less than the $30 million that we've committed in the last 18 or so years to these incubator programs. The question was raised as to whether or not there was favoritism in any way of the biocenter. I have heard that there are rent breaks that are offered, and I think that Mary Sydney could probably respond in some way to that question. I have no idea whether or not the company that Ms. Richter was affiliated with was one that received rent breaks I have no idea but that would be an interesting question for the auditor to look at because there was not always completely uniform application of rent requirements. The notion that there was no conflict of interest because everyone knew exactly what Melinda Richter or anybody else was doing with other cities I think frankly isn't true because I didn't know and I don't think anybody on the council knew and I think that would have been helpful information for us to know. What is clear and what came out unquestionably in the hearing when we last met at the CED committee is I had asked whether or not Mary Sydney had ever informed anybody at the RDA that an individual incubator manager was holding stock on her own account in one of the tenant companies when she was supervising and the answer was, no, that information wasn't conveyed to the RDA by her. Apparently now we're hearing that somehow or another it was conveyed by Melinda Richter. One thing I'm certain of: It was never conveyed to anybody sitting on this panel or to me and we after all were the ones making those decisions. Again it's this problem of information flow that is at the heart of this. And it seems to me that if we're

going to assume that the San José university research foundation did a wonderful job in managing the incubators and will continue to do so, and if that assumption is justified, then we shouldn't have any problem handing off the baton. But it seems to me that we don't know that and that's why we need an independent analysis. Finally, the -- Ms. Sydney mentioned that the Chabin report provided -- was provided or obtained only very limited input from the incubators and from the research foundation. I encourage folks to take a look at that. There are many, many appendices to that report and it is quite overtly annotated with many, many citations to the research foundation and the incubators themselves. There is no question about where the information was coming from. There was only one set of sources and that was the incubators themselves and the research foundation. As to whether or not Jim Robbins is an authority that we should rely on, I couldn't agree more that you shouldn't rely on. He after all gave us a glowing report about what a great job the incubators were doing. I wouldn't expect him to give anything other than a glowing report since he was managing two of them. The problem is that even amidst that glowing report he still had the wherewithal to say this model isn't working and fundamentally we should have a different organization running the show. I think it's frankly an abdication of authority for Mary Sydney to say, we weren't managing the incubators, so we shouldn't be responsible. They have oversight responsibility on that contract. It was their responsibility ultimately to determine whether or not the numbers they were getting were truthful or not and to at least provide some level of scrutiny so that all of the public agencies that were involved San José State university and the RDA, actually had truthful information on which to base their decisions. So I think all of these problems that we've seen in the past should give us pause and they should give rise to an audit to determine whether or not this is the way it ought to be -- the transition ought to occur. And if I'm -- if it's down strength to that audit that everything was fine and that these reports should be ignored then that's fine at least we've got an independent source of that but we don't have that now.

>> Mayor Reed: Well I'm going to go back to the audit when I said I thought it was irrelevant to the decisions to be made. I think as far as I'm concerned the decision has been made. We're out of the incubator business. It's just a question of how we make that transition. Whether or not the incubator program survives really is up to San José State research foundation. And they're the ones that have taken the financial risk of managing the incubators. If they want to continue to do that, that will really be up to them. As far as I'm concerned we're out of the business. Whether I think they were wonderful or awful, it really doesn't matter, we're out of the business. That's

why I think the audit is irrelevant to the decision that has to be made because we don't have the wherewithal to continue even if they were the most wonderful program we have. We're cutting lots of good programs. So I don't need to have an answer to all of the questions some of which are pretty interesting because I don't feel like I have the capacity to make any other decision other than we're out of the incubator business and if San José State research foundation can find a way to save the incubators that would be I think good but as an agency we're out of the business and that's why I think it's irrelevant to my decision making in terms of how we go forward. And I don't think, back to your metaphor Councilmember Liccardo of the babies are not ours. I think they belong to San José State research foundation to decide who's going to get the baby. Maybe I misunderstand the relationship in a legal surroundings there but I don't think these babies are ours to put up for adoption. If they want to keep them or put them up for adoption, I think it is their call and not ours.

>> Councilmember Liccardo: Mayor I just wish you would actually look at the agreement before you reach that conclusion.

>> Mayor Reed: Well, I have already reached that conclusion before I heard about these agreements. I'm happy to look at the agreements because, you know, I could be wrong about the legal relationship, and you know I would be interested in seeing those. I think it could be interesting but I'm just telling you what I'm thinking now is we're out of the business. And unless San José State research foundation has some claim against us that keeps us in the business, it's kind of irrelevant because I'm assuming whatever agreement we had with them in a sublease goes away with the leases. I suppose there's -- could be an issue about how long we've got to pay the rent on the E center because the leases got two or three more years but that takes me back to the oversight committee which will be making the decisions and they might have another -- maybe they going to get in the water fall too.

>> City Attorney Doyle: I think that's true. We haven't looked at performance issues, so I'll have to confess I haven't not looked at the agreements to look for performance questions. Just so if committee --

>> Mayor Reed: I'm not interested in performance issues, I'm interested whether there's a legal framework that I'm mistaken about, San José State research foundation's obligation and asset, whichever one you want to call it, it's their baby and not ours and they can't make us keep paying for their baby because there's no child support order anywhere.

>> Councilmember Herrera: That's right.

>> Mayor Reed: Just to make that metaphor completely crazy.

>> Mayor one thing I could to shed a little light on this not to question but I can give you the dates of when the sublease agreements terminate necessitate and there's two different termination dates. Or the biocenter it terminates June 30th, 2012. It's at the same time that your -- that the board agreed to pay the rent through for the biocenter, so that's co-terminus. At the end of the fiscal year, our fiscal year. The Humboldt agreement terminates at the same time, June 30th, 2012. And the San José State Foundation terminates with an innovation center for the two incubators, November 30th 2011 in just a month. Under normal circumstances where we could renew that, I would normally take it for the board and whether you wanted to or not that would be a political decision, a policy decision but under our current stay we can't do that anyway. So that terminates and I have vetted that with the attorneys. And that doesn't obviate the need to pay the master lease. So we would continue to pay that.

>> Councilmember Liccardo: Through 2014.

>> Correct.

>> Councilmember Herrera: That's right that's the master lease.

>> The master lease is on the building regardless of who's in there.

>> Mayor Reed: On the building. So these are the sublease agreements?

>> They are the sublease.

>> Mayor Reed: Are they the same sublease agreements Councilmember Liccardo talks about?

>> They are. That's the only one. They are called technically sublease and cosponsorship agreements.

>> Councilmember Liccardo: Co-sponsorship operating agreements.

>> Mayor Reed: You mentioned three, and I thought you said there were two?

>> Well, there were two that are relevant --

>> Councilmember Liccardo: He is referring to the E center which is not the subject of my concern right now.

>> I just wanted to throw them all out there.

>> Mayor Reed: Well, my question on just from a legal point of this is whether or not anybody has got the obligation or the ability to make us continue to fund these leases, beyond the power that the landlord has.

>> City Attorney Doyle: No. I mean it's -- and the only question and you threw it out earlier is whether or not the oversight committee can say get out of these agreements and find a way to get out. But they're commercial leases and we're liable until they terminate.

>> Mayor Reed: Okay then the other issue for me is there are 22 companies in the biocenter and I don't know how many down the street in the E center. And while there will be a transition, I do hope that we can have a transition plan that will make it possible for those companies not to be thrown out on the treats, not to be disrupted in their operations that they have enough time that they can make whatever arrangements necessary if the E

center is going to continue or not continue, under San José State foundation, the individual companies can be disrupted by this and I don't want to do this in a way that disrupts them. But they all have to understand that we're not going to be in total, complete control of, even though we have appropriated the money for the rent, if January 15th California Supreme Court says the governor can go ahead and do things that he wants to do on redevelopment, we lose control of that, because of the new structure that will be in place. And it's pretty hard to predict exactly what might happen. And so you know San José State and these companies all need to be mindful of the fact that we may not be able to pay the rent beyond January. And I don't know if that's the scenario but there's so many scenarios coming out of what the Supreme Court might or might not do, that companies and everybody need to plan ahead. And the sooner that San José State foundation can have this transition plan so the companies know what's going to happen, how long they might have to stay, indefinitely or a short period of time, I don't want to forget as we discuss our relationship that there's a lot of individual people who are working in those companies of companies and individual companies that have some value to us that we want to try to make it possible for them to transition in a meaningful way instead of just all of a sudden they're out of business. Okay, do any of those companies have claims against us? City Attorney? That was the other thing. They are all subtenants some subleases.

>> City Attorney Doyle: They're all subtenants as I understand it to San José State university foundation. Depending how these things play out as to more senior obligations there may not be any more money left.

>> Mayor Reed: We may not like that but we're stuck with whatever the Supreme Court says. Further questions Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor Reed. I do not feel as though I'm a mother hen to the incubators. I just simply believe it's a service we will no longer provide. At the last Rules Committee when we chatted about this I just gave the background of the incubators going 17 years, with why the council, the history, I came to the conclusion when I'm jug the auditor's workload I'd like to have it do workload that I could actually extract some savings from. And this is money spent. Same way as I've held off on doing -- requesting an audit of the housing

department because it may well be over in January 15th, 2012, even though there's millions of dollars that we're not collecting for property tax revenue that could be paying for police and city services. I just view it as simply a matter of leases. Whoever runs the organizations after is really a choice that may or may not happen. And it's certainly a nice thing to offer but it's not a must-have and we'll move on as a city and -- but do I want to say that I did say something inaccurate last time we spoke on this issue because I did work for a company that started off in the incubator called agile software. I mentioned that we had 350 to 400 employees. I actually went back and spoke to the founder of the company. We actually created 900 jobs. That was worldwide. 450 were in San José. The company was in downtown from 1995 to 2003. Only when they could not find more space in the downtown did they move locations and because they had the incubator, and their employment base was in San José, they stayed to San José, they moved to Edenvale, where they stayed from 2003 until they were purchased by Oracle in 2006. And subsequent moved out. During the time they were down here, all those employees, there was the spending that occurred at the restaurants and the dry cleaners and all the things, the dinners, there were all the partners and employees flying in out of the country and the states that were coming in and staying in our hotels and paying the airport fees and et cetera. And then Agile actually used to have events that would track 1000 room nights in our downtown, because they had our users' conference here. But again that great success, was never guaranteed, it's what it was. But again that's money that's now has been spent. And but with that said I just wanted to correct that. You know there were some home runs from the incubator program and then there were companies that fizzled. There are companies that moved out of San José based often relationships that we don't understand based on CEOs VC funding boards commercial real estate et cetera. At this time I appreciate the tenacity, obviously tenacity and desire to go forward, Councilmember Liccardo but I just don't see it as a priority for our auditor.

>> Mayor Reed: I'm hopeful that some of those agile people will be back in downtown soon as Oracle builds out the building, some of the same people.

>> Councilmember Oliverio: Quick side note on that, Mayor. As agile is downtown, it started to create some synergies. So with there ended up being more companies coming downtown, like data sweep and Sierra Atlantic,

and so they felt that the downtown was kind of the software place to hang out. Again, markets change, and office changes, but that was sort of the dynamism that got created at the time.

>> Mayor Reed: Councilmember Herrera did you want to make a motion on this?

>> Councilmember Herrera: Motion to -- in terms of the -- I thought --

>> Mayor Reed: Well, we've got a request to direct the auditor to add some work to her work plan.

>> Councilmember Herrera: I say no we don't we leave the work plan as it is.

>> Councilmember Oliverio: Second.

>> Mayor Reed: Motion to make no change in the auditor's work plan, all in favor, opposed, none opposed, that's it. Thank you, Councilmember Liccardo, sorry we didn't get you out of here earlier. I know you had conflicting scheduling issues.

>> Councilmember Herrera: Chickens and eggs and now what was today, babies and --

>> I like my chicken and egg metaphor.

>> Mayor Reed: All right we still have some items on agenda.

>> Councilmember Oliverio: Motion to defer item 3 or do you want to talk about that?

>> Mayor Reed: I'm not sure what item 3 was. p.m. a revolving door.

>> Mayor Reed: Well we need to refer it to staff probably for some work.

>> City Attorney Doyle: We can -- yeah.

>> Mayor Reed: But we have a couple of other things. So the recommendation from Councilmember Liccardo to move the general plan update from October 25th to November 1st is --

>> Councilmember Herrera: Motion to move.

>> Mayor Reed: Motion is to move the general plan update to November 1st.

>> Councilmember Oliverio: Would that be a 7:00 start time mayor?

>> Mayor Reed: Actually we're going to talk about -- we're going to talk about that now. Before we decide to move it since we didn't discuss the October 17th study session we should talk about that under this item. So yes before we make the motion. We'd originally had a request for a few hours of study session on the 17th. And so if we move this to November 1st, what I'd like to see us do is to have at least have an hour and a half block in the arch where staff can make their presentation and we can have a discussion, continue the hearing into the evening in case there are people who would like to come testify who couldn't come in the afternoon and then take council action in the evening, so we'd essentially have the study session in the afternoon as part of our regular council meeting and Laurel Prevetti is here to talk about whether that is feasible because we asked her to do that.

>> Laurel Prevetti: Thank you mayor, actually that plan works just perfectly given the success that we had at Planning Commission and the fact that the EIR was not challenged for the envision 2040 an hour and a half study session is sufficient. Thank you.

>> Mayor Reed: And then the specific agenda for that study session, I know you've got something in the packet but given the length of time we've been here we don't necessarily have to talk about that today since we're bumping it a week anyway.

>> Laurel Prevetti: That's correct. We're looking at a much smaller agenda for you. Really what we'd like to do is invite members of the task force to identify the key themes of the envision 2040 plan and then we would also like to discuss how we intend to implement the man. There are a number of new features that we think council will want to engage in terms of how we move forward with its implementation. So it's a much simpler agenda than what we included in your Rules packet.

>> Mayor Reed: Okay and then one other suggestion. We've had several study sessions on the general plan over the years but we do have a couple of new councilmembers who didn't sit through all the study sessions. Although one of them was a Planning Commissioner. So I'm guessing that Councilmember Campos has heard quite a bit of study session on general plan but Councilmember Rocha hasn't had the benefit of all that so you might want to just check with him and see if he wants to go through some of the background stuff before the council meeting gets a chance to do that because the rest of us have already set through some of it. So then I guess the motion is to move it to the 1st and we'll deal with the precise details of it later as we work up the pro size agenda. That's the concept.

>> Dennis Hawkins: Mr. Mayor we don't have an evening session calendared for the 1st at this point. The evening session for November is currently planned for November 15th so I just wanted to clarify in the motion it would be for an evening for November 1st.

>> Mayor Reed: Add an evening session just on the jeopardy. Laurel.

>> Laurel Prevetti: And then we also need since this is a general plan hearing, we need to not only cancel the general plan update, but also, move the general plan hearing explicitly to November 1st from the 25th.

>> Mayor Reed: Is that included in your motion Councilmember Oliverio?

>> Councilmember Oliverio: It could be. Could you explain to me how many items are on that -- or is this just the ones that were sort of in the press, rancho and the one in the South Edenvale area?

>> Laurel Prevetti: That's correct.

>> Councilmember Oliverio: They are kind of connected, though. Aren't you asking for guidance from the council, adopt the general plan, by the way, here are three projects sitting out there what do you want to do?

>> Laurel Prevetti: That's correct and staff will be coming forward with additional guidance as to how to handle those and additional modification. You will have that prior to November 1st. So really the evening of November 1st is intended for all of those general plan related questions.

>> Councilmember Oliverio: And do you see the vote for those parcels going individually or incorporated in one grand motion, what's the preference?

>> Laurel Prevetti: Well I think given the different policy questions that each of them raise, the mayor may choose, it would be best to have individual votes as well as a concluding vote on the overall effort. But as I mentioned staff will likely be coming forward with other recommendations for your consideration in terms of the timing. So we're still looking at whether all of those are timely for discussion on November 1st.

>> Councilmember Oliverio: And if I may, mayor, then do all those must they be done that evening?

>> Laurel Prevetti: No, the council always has the choice to deny, defer or approve. So those choices would remain for you.

>> Councilmember Oliverio: Okay.

>> Mayor Reed: Okay so the motion if I may rephrase it and see if I get it all is we move the general plan update to November 1st. We move the hearings on the general plan amendments to the 1st. And are those the two specific -- is there something else? I thought there was one other thing we need to do. Oh, set the evening meeting on the 1st in order to do that. Ed.

>> Ed Shikada: And also Mr. Mayor if it wasn't already complicated enough I believe the council received a request from Councilmember Chu's office relating that he wasn't available on that date is that correct?

>> Laurel Prevetti: Yes he acknowledged that his travel plans would keep him from being available on November 1st, so his office inquired as to whether the Rules Committee would be interested in moving the whole item to November 8th. That was just information that came forward for your information.

>> Mayor Reed: One of the complicating factors is I believe the people who are contracted to work on this contracts run out on the 31st.

>> Laurel Prevetti: That's correct.

>> Mayor Reed: We're likely to have somebody else absent on the 8th, you never know. The reason we are moving it from the 25th to the 1st is to accommodate Councilmember Liccardo, who happens to be the chair of the task force. And I think we kind of have to accommodate the chair, who needs to lead the presentation. I assume that people will still show up on the 1st, even though their contracts run out on the 31st?

>> Laurel Prevetti: Yes, staff is very dead waited to this effort. So you will see them.

>> Mayor Reed: Okay. On the motion, then? All in favor? Opposed? None opposed, that's what we'll do. All right. I'm sorry do I have a card on this one?

>> Pass.

>> Mayor Reed: Going to pass. But we'll come back to you, I'm sure. All right. The reason I'm having some trouble Mr. Wall I just have to confess, the numbers H-2 K H-3 they don't compute for me. I'm always thinking about what the topic is. (inaudible).

>> Mayor Reed: Okay. Next item was the revolving door ordinance item. It was referred to us from the council meeting, and I guess one question is, are there any pending?

>> City Attorney Doyle: No.

>> Mayor Reed: Any requests that we know of?

>> City Attorney Doyle: No and the last request I'm told that the individual actually got a job with the City of Morgan hill. It is a nonissue at this point.

>> Lisa Herrick: She may actually appreciate that waiver in this point.

>> Mayor Reed: That one is approved.

>> City Attorney Doyle: If I can sort of cut through the Gordian knot on this one. If the council -- I mean the real issue gets down to -- there was a lot of concern expressed about people that are laid off, and the if that's the concern there's an easy fix and just giving a waiver for people who are laid off. The way the last memo was phrased as people who were involuntary terminated, and involuntary termination sort of raises a whole host of a larger group, and just people who were laid off because of budgetary concerns. But that we can come back and talk about this further. We can give you proposed language and let the committee go up or down. But I think if that's the sense of the committee, because it sounds from the council they wanted to look at that seriously, you know, there's pretty much an easy fix.

>> Mayor Reed: Well, there were some questions that you raised from the dais which I thought were important questions and maybe they're answered by how you defined who is eligible for this. But having looked at that time way they're doing it in New York, they had a time period for the layoffs, okay? We had layoffs during this X period and so people got some sort of certificate from their supervisor I guess that they were laid off, and so the window of how we define it I think -- how do we know somebody was laid off? As opposed to they just happened to get fired during that time period. And those kinds of issues, I think you need to think about because we'll come back. And this would definitely not apply to councilmembers, right? Because councilmembers don't get laid off. They can only be recalled.

>> City Attorney Doyle: Right.

>> Mayor Reed: Or termed out. So I think some of those definitions and the other thing I would suggest is given the work that the committee put into the last waiver request, is that we look at that structure as to what might be the blanket waiver. Because I think there are some issues that I would not support, and a complete blanket waiver I don't want to get somebody who gets laid off being back in front of the council next week lobbying, engaging in lobbying activities. That was not part of the waiver we granted this last time. So the structure of that I think is a good starting place since we already spent a lot of time and the council's already approved that one. That could be the template for the sort of the blanket waiver.

>> City Attorney Doyle: Let me suggest we come back with some options and some language.

>> Mayor Reed: Okay, committee? So referred. We have a designation request, district 6 movie night as a city sponsored special event to allow donation of materials and services, et cetera, you want to argue --

>> Councilmember Oliverio: Motion.

>> Councilmember Herrera: Second.

>> Mayor Reed: Motion to approve. Mr. Wall I don't think you have one on that. Motion is to approve, all in favor, opposed, none opposed, that's approved. Open government appeals, we have no, nothing, right? On open government appeals?

>> Dennis Hawkins: Correct, no appeals.

>> Mayor Reed: Open forum, Mr. Wall.

>> David Wall: There's still time to issue a public apology to Mr. Kite for all the trouble he's been put up with and I'm kind of insisting upon this. The Mercury News should also do this and I know they are listening and I insist that they do so, as well. To make sure it's a blanket apology not just to Mr. Kite but to the entire Redevelopment Agency. Now we got to get to this issue of the article Mr. Mayor in the vanity fair. I don't believe Mr. Lewis quoted you correctly.

>> Mayor Reed: Did he describe you correctly?

>> David Wall: I don't know who that person is Mr. Mayor.

>> Mayor Reed: Okay, just discussing.

>> David Wall: I have no idea, I don't go to every council meeting and I don't get to speak for five minutes. But we -- it's just a quote and I quote when did we go from giving people sick leave to letting them accumulate it and cash it in for hundreds of thousands of dollars when they're done working? There's a corruption here, it's not just a financial corruption it's a corruption of the attitude of public service, period close quotes. Now did you say this or did he make stuff up? Because he possibly made stuff up throughout his article, I don't know. There's a good chance he did. But I'm asking you. Because I believe city employees should get the benefit of their bargains, I don't think that anybody any city employee anywhere including our honorable City Manager should have to give up her sick leave. I don't believe any police officer, firefighter especially our learned attorneys who are

disappearing because that law firm is being run into the ground by council action but all city employees not juts one but all. Did you say this or did he make it up? The clock is ticking. I'm waiting.

>> Mayor Reed: It's your time.

>> David Wall: I'm just asking you the question if you said this. Oh see management -- management uses the tactic silence implies consent in this city. Thank you.

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