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>> Mayor Reed: Let's call the meeting to order. This is Rules and Open Government Committee meeting for September 8th, 2010. Do we have any changes to our agenda order that we need to talk about? Okay. First thing would be then review of the September 14th agenda for the council meeting. Any changes on page 1? We may need to come back and talk about the starting time for the closed session report, Rick, as you still have the litigation, summary stuff, all the significant cases, and then I think we're going to start performance reviews with the City Clerk on the 14th, perhaps. If so, we might want to start the closed session at 9:00.

>> City Attorney Doyle: That will work. It will work for me, I don't know about the committee.

>> Mayor Reed: All right, let's just say 9:00 because we'll have a couple extra things in there. Anything else on page 1? Page 2 or 3? Page 4 or 5? Page 6 or 7? Page 8 or 9? I don't have any written requests for additions. Are there any other modifications or changes that we need to talk about?

>> Councilmember Chirco: Move to approve.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion to approve as amended. All in favor, opposed, none opposed, that's approved. September 21st council agenda. Anything on page 1? Until we get other dates set on performance reviews, we won't know for sure if that will be a date or not so we can just wait until later to figure out the time to start. Page 2 or 3?

>> Mr. Mayor, I had 1.3 as a joint item from councilmembers Nguyen and Liccardo.

>> Mayor Reed: Has the sacred heart community presentation?

>> Correct.

>> Mayor Reed: Anything else on 2 or 3? Page 3 or 4. Or 5? I guess or page 6 or 7. This may not be the longest agenda item in words but it's pretty close.

>> City Attorney Doyle: Mr. Mayor, there's an item carryover from the August 3rd meeting which was the guiding principles for the baseball negotiations revised and you had asked the council had asked at the August 3rd meeting to bring that back and so I think the 21st was the date we're targeting and we don't have the language here but we'll have the language for the next committee meeting. We'll get that to the clerk today.

>> Mayor Reed: Okay we pretty much approved the language, we just need to put it in resolution form and get it back in final form. So 21st, add that to the agenda. We might want to do that in the evening. I don't know, we can decide that next week because there is an evening meeting. Anything else on -- I forgot what page it was on, six or seven or eight or nine, or 10? The land use items are on. We have no requests for written changes. What have you got?

>> Councilmember Constant: We do have one add here, a presentation, commendation and I wanted to ask, I couldn't remember our number of commendations. That would make it the fourth one in the evening, is that the number we do?

>> When I spoke to City Clerk they said that was the limit.

>> Mayor Reed: The Camelot, request for add, four in the evening?

>> Councilmember Constant: And a couple in the daytime, two.

>> Mayor Reed: Okay.

>> Councilmember Constant: I'll make a motion to approve with the add.

>> Councilmember Chirco: Second.

>> Mayor Reed: Motion is to approved as amended. All in favor? Opposed? None opposed. Redevelopment agency agenda. September 14th. Page 1, the closed session starting time would need to be modified to 9:00. Anything on page 2 or 3? Or 4? Any other additions?

>> Mr. Mayor, there are no changes or additions to this agenda except for the time.

>> Mayor Reed: Start time, okay.

>> Closed session time.

>> Councilmember Constant: Motion to approve.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion is to approve, all in favor opposed, none opposed, that's approved. September 21st draft agenda.

>> Mr. Mayor members of the committee the agency at this time has no items on September 21st and if that remains that way we would request cancellation next week.

>> Mayor Reed: All right. We have nothing under upcoming study session agendas to review. Legislative update, state and federal. Betsy Shotwell is here. Let me give a regional update before Betsy starts. I just came back from a meeting at the Metropolitan Transportation Commission, subcommittee on governance, the discussion, continuing discussion about getting San José a seat at the table at MTC. I'd say those discussions are going well. But it will require change at the state legislature. And we all know how difficult that can be no matter

how simple it is and even if everybody agrees. But right now, it looks like everybody is in agreement, that there's a way to get San José a seat. But we'll require the legislature to change the rules. So. I'll keep working on that.

>> Betsy Shotwell: Thank you very much. Betsy Shotwell, director of Intergovernmental Relations. I regret our lobbyist from Sacramento, Roxann Miller, was on her way down to give you her perspective on things, but her car was starting to have some problems on I-5, and I strongly recommended her to turn around. So we'll reschedule. Also, we may have some new news. At this point in time I really don't, from the state of legislation and things pending on the governor's desk, he will be away from the state for a few days on a trade mission, and so I don't anticipate action until he returns.

>> Mayor Reed: While he's gone, will Lieutenant Governor Maldonado be able to sign those bills?

>> Betsy Shotwell: I can't comment on that. It's an election year.

>> Mayor Reed: Okay, and we have nothing new on the federal or state. Moving on to meeting schedules. Got a request to add an evening meeting on October 5th, 7:00 p.m. We talked about that last week. I assume that's regarding annexations, plural, right?

>> Yes.

>> Mayor Reed: Okay.

>> Councilmember Pyle: Move approval.

>> Councilmember Chirco: Second.

>> Mayor Reed: Motion is to add the evening meeting, October 5th, all in favor, opposed, none opposed, that's approved. And a request to reschedule the November 22nd, 2010 Community and Economic Development

Committee meeting to Monday, November 29, 2010, that would be to move the meeting to the Monday after Thanksgiving. Correct? We have a motion and second. All in favor, opposed, none opposed, that's approved. Anything in the public record the committee would like to pull for discussion? I'd like to draw your attention to item A which is a letter from Cisco thanking our staff for doing a great job and a quick response to their request to modify the traffic light timing and sequencing across the Tasman corridor interchange. Staff, thank you very much, good work by the Department of Transportation for our largest private-sector employer in the city. We appreciate that. So it's nice to get a letter from John Chambers from time to time.

>> Councilmember Chirco: Move to note and file the rest, all of them compliments to the appropriate people.

>> Mayor Reed: Motion is to note and file the public record. All in favor? Opposed, none opposed, that's approved. Nothing on boards, commissions and committee appointments. Next item is H-2, that is a recommendation from Councilmember Liccardo, directing the City Manager or City Attorney where possible to clarify and memorize city policy -- oops, sorry that's the next one. To expand the scope of the Team San José audits, to direct the City Auditor and City Manager. We have a memorandum from Councilmember Liccardo who is here to speak to it. Sam, did you want to talk about it? You want to let the City Manager --

>> Councilmember Liccardo: City Manager or the committee, I'd be happy to answer any questions you may have.

>> Mayor Reed: Sharon Erickson is leer. My question is, is this something that you can do within the scope you're already doing? I know you have several Team San José matters.

>> Sharon Erickson: Right. As you see on H-4 on the agenda we are starting our Team San José audit and we have started out job start letters and meeting with interested parties since then. We be happy to incorporate anything we can from Councilmember Liccardo's memo into the scope of the review. The only issue I see there is one of timing that we some urgency to get this audit completed. So we're going to do as much as we can pushing

towards the November date to get back to you by November. We will be back to you on October, on October 5th with some kind of status report open our efforts to date.

>> Councilmember Liccardo: I might suggest if it might help the auditors office if there was a bifurcated approach, or there are items that are clearly time-sensitive that need to move forward, that we move forward with those. The other matters that require additional work would come along later.

>> Sharon Erickson: Makes sense.

>> Mayor Reed: Okay you'll be able to identify those as you go through the work. Sometimes things that look simple turn out to be really complicated and vice versa.

>> Sharon Erickson: Precisely.

>> Mayor Reed: You'll report back here when? October 5th, 6th?

>> City Manager Figone: Actually, Mr. Mayor, it will be part of the Team San José response to the grand jury on October 5th and at that time, we'll include a staff update on where we're at with this and other related requests and be able to answer any questions that you might have.

>> Mayor Reed: Okay, well I think that was part of the reason for Councilmember Liccardo recommending that we get this information, was to help us in a response to the grand jury stuff as well. So other --

>> Councilmember Constant: Move to approve.

>> Mayor Reed: We have a motion and second to approve. Anybody else here want to speak on it? I do have one request, David Wall.

>> David Wall: Good afternoon. I would like to thank learned counsel's memorandum and its construct. It's fairly accurate insofar as detail. But there is one sector that should be included in my opinion. Is that the investigation should look into the aspects on who is responsible for what happened within the office of the City Manager. The problems with Team San José are not new. And it's my opinion that there are great resources in the office of the City Manager in reference to contract management, et cetera, and so forth, that should have been timely and could have prevented this mess. And I think there should be a level of accountability to the taxpayers, since this represents at least seven firefighters, six and a half firefighters that are being lost with this money. Also, I would like to see the cost of the audit and all attorneys fees be recompensed. This is out of the ordinary and out of the scope of doing business with these people and this is cost recovery. Also I would like to see bonuses put in forth to the offices of the auditor and the office of the attorney for a timely resolution in favor of the taxpayers. This is out of the ordinary. There must be something to deter, and to punish, those that take advantage of the public's moneys. Thank you.

>> Mayor Reed: Anyone else want to speak on the item? We have a motion to approve, all in favor, opposed none opposed, that's approved. Item H-3 is a request from Councilmember Liccardo, Herrera and Nguyen to direct the City Manager and City Attorney where possible to clarify and memorialize in city policy any changes in implementing of ordinances revisions related to business development, including permits, legal nonconforming uses, hotels, and parking incentives. I have a memorandum from councilmembers, as well. It looks like Laurel Prevetti is going to take the lead on this. But I'm going to ask the City Manager first.

>> City Manager Figone: Thank you, mayor. Given the various recommendations, we did chat as a staff, and I do think it would be helpful if Laurel walked you through each one and commented on how we would entertain each of the recommendations. Some lend themselves more to a workload assessment, others do not. They're operational issues and so if we could just take a moment and have Laurel walk you through her vision for how we would proceed, I think it would be helpful.

>> Mayor Reed: Okay, go ahead.

>> Laurel Prevetti: Thank you very much. Laurel Prevetti, assistant director for Planning, Building, and Code Enforcement. We do want to thank the councilmembers who put forward this idea because we are very much open for business. And it's very important that all of our businesses know that. And as we do development services, we're constantly balancing the needs of business with the needs of the neighbors who might be adjacent to that. So with that, items number 1 and 2 where we're talking about perhaps conflict that might happen by our different inspection groups, and the second, related to fees and taxes, we see those as really communication issues within our overall development services unit. As you know, we've been underway with how we can better unify our work with fire, Public Works, Planning, and our building division, so that we're really more one voice. So we would see items 1 and 2 as something that we can handle really more internally, and then report back, either to the CED committee or through an information memorandum so you can understand how we're proceeding with this kind of communication. Item number 3 in terms of clarifying Title 20, which is our zoning code, as it relates to legal nonconforming use, the suggestion here is how we could reduce the burden that's placed onto businesses that are interested in being identified as having legal nonconforming. We do have a process for businesses to come forward which is fortunate that they have that opportunity. And we communicate mostly through the application process in terms of what kind of records that are required. It's not something that's codified. Again it's more of our practice. This one, again, we appreciate where this is coming from. However, we do need to do some evaluation. And for this -- for item number 3 we would request that we report back to the CED committee, the Community and Economic Development committee, because again there are some tradeoffs in terms of how we might -- and some other options as to how we might want to proceed with this one. Item number 4 pertains to the conditional use permit requirements as it might relate to full service hotels. This really is a suggestion for a new ordinance. And this would be the one item that would require a workload assessment. Because as we were talking last week, we have a lot of other ordinances in the queue. Again, the next phase of the sign code, update, we've got the Alum Rock zoning that we're underway with. We're working with the attorneys on of course medical marijuana as well as the utility issues so we've got some. We have got quite a bit in the queue, and so we would need to work with committee. And again, we would want to recommend that we go back to CED in terms of what are the ordinance priorities. Item 5 with respect to the parking incentive program, this is certainly an investment that the council may wish to make, and perhaps this would be better discussed through a budget process, where it's mid year or at some other point. In looking at our Community and Economic Development work plan for this

fall, we would request that we add an item to the CED work plan for either October or November to bring back what we would call a development services update, kind of characterize it more generally, in order to allow for these and perhaps other items to be discussed at committee. And again we want to thank the council for their interest in making sure that we've got an excellent development services in our city.

>> Ed Shikada: Mr. Mayor, members of the committee, Ed Shikada, Assistant City Manager. If I could also dovetail on number 5. I did have the opportunity to talk to Jim Ortbal just before the meeting, and perhaps the parking incentive issue could also be incorporated into the CED discussion, since there has been substantive discussion of it previously, part of what the council adopted. So I think it's relatively straightforward to incorporate it for committee, council discussion.

>> City Manager Figone: Just one more thought, Mr. Mayor. We again talked at staff level and I think it would be helpful if the planning staff as well as the city attorney's office drill down a little bit on the list of ordinances that are under development, to give you all a better sense for what is a target time frame, as well as how much time is left to be spent on some of these that are in the queue, so that can you have a better sense for if you did insert something new what could you expect in terms of the deliverable. So we're going to be working on that to have that list be more helpful to you.

>> City Attorney Doyle: Mr. Mayor and I think as you know not all ordinances are the same. Some of these are fairly easy to do. Some of them like the sign code are fairly complicated and require a lot more time. So there's never a one size fits all so that would be part of any conversation or you know coming back I think some these things are fairly -- I don't want to say easy but can be done pretty quickly.

>> Mayor Reed: Anything else to add, Laurel? I had some questions about these recommendations, and the staff work. I'm trying to see how this fits into the council action that was taken back in February on the economic development strategy which you identified the highest priority strategic goals and highest priority action items. And there was a memorandum from myself, Councilmember Liccardo, Pyle and Herrera then about development incentives for economic recovery. So a lot of things are already in motion. And what I don't want to

do is to go off on a side direction and not be able to do the things that we've already started to do, without knowing which ones we're not going to be able to do in order to do something new. A lot of what's in the memorandum in front of us I think fits within the work that council has already said we want you to do, because the highest priority strategic goals for 2010 included improving the speed, consistency and predictability of the review process in connection with developing a business in San José. Much of what councilmembers have in the memo are related to that strategic goal. So how would this work fit into the work you're already doing, and when would you be reporting back on the implementation of the economic development strategy, and the specific things?

>> Laurel Prevetti: In late September we will be reporting to the CED committee regarding the implementation of the project manager concept, as well as the combined development services administrative hub. Both of those are streamlining efforts in terms of improving the delivery our development services to all the customers. So we will be at committee later on this month with that. Underlying that effort is being able to streamline some of our processes to reduce gaps in terms of projects that fall through cracks, or when we know there's duplication of staff effort and so we want to not have those staff duplications so we have the resources to move our projects along most efficiently. So those are two initiatives that will be back at committee this very month. There are other things that are underway as you know. Development services is constantly in a process-improvement mode. There are always things we could be doing better cheaper faster. So we are in that mode. The issue with respect to code changes for the conditional use permits, for example, that would be a tradeoff question of, is this really the highest priority in terms of getting businesses open, and that would be a conversation that we would want to have with the economic development committee compared to other ordinances such as the sign code where we see that as also very much helping our businesses. So there are going to be tradeoffs in terms of our ability to meet all of the expectations for improving development services.

>> City Manager Figone: Although Mr. Mayor, I would say and please Laurel correct me if I'm wrong, I see number 1 as a management issue and one of the things we discussed as a staff is that internally, the department needs a way to rectify these conflicts in the field. And so that is one that, again, I think the staff could probably easily talk about at the September meeting, in terms of how we're going to deal with this management

issue. Recognizing we have new people, and there's training going on. But at its core this is a management issue and ultimately our customers sometimes, you know, unfortunately feel the fallout from that. So that's something I think we can tighten up internally, with, you know, accelerating to the next level supervision before there would need to be an appeal. So that's when Laurel and I sense you're prepared to act on in quick speed, correct?

>> Laurel Prevetti: Actually, yes. In fact we have already put into place a way for customers to accelerate and get those issues raised up to a management level quickly. What we could always do better is getting that story out there. Letting the customers know how to access upper management when there are conflicts in the field. So again it comes down to communication and those are things that we can easily do internally and then report back either to committee or in an information memorandum format.

>> Mayor Reed: I have a couple of questions. One of the things we authorize in the budget and you've already gone the implementation is the development services project manager which is a terrible name for the job. I'm calling it project expeditor. You can call him whatever you want, but the whole objective is to expedite these projects. Lee Butler has been selected, and that's I think good news, and congratulations to Lee. Question is how much authority does he have? Or is he just going to be one more person in the building who is helpless to fix problems when you have three inspectors who are disagreeing with each other?

>> Laurel Prevetti: He's been empowered by Joe, myself, the building official, the fire marshal and Public Works to essentially resolve those conflicts. If he needs assistance from Joe or myself or any of the other development services directors, he can call on us, and we're there together. So it's really about how do we unstuck our projects, particularly those driving industries that are wanting to come to San José so they can get -- occupy a building and get going as quickly as possible. So we again are looking at how we can get his name out there, so again our community knows that we've filled the position, and that we're ready to go and then he's also going to be working on not only expediting those key projects but also helping us streamline our processes so that we don't have the cracks, the gaps, or the overlaps in terms of service delivery. So he's been empowered with quite a bit and when we introduced him to the staff spontaneous applause broke out from all of the development services. So he is well respected with his peer group and I think we're on a good start.

>> Mayor Reed: That's good. Because that's a key position, we hope that he has great success, because there are a lot of projects that we want to make sure get done quickly. Because that's the only -- let's say it is the only thing -- it is the most important thing we have to sell now is the ability to move at the speed of business. And I've got dozens of examples where we've been successful at doing that and many more in the pipeline or that we want to get in the pipeline that really depend upon our ability to do that. I met last week with a group of 15 developers, brokers, and investors, to talk about what they think is happening in the economy, what their plans are, and what they think we could do to try to convince them to write the \$100 million checks necessary to start some new developments. It was an interesting group of people, I want to share some of the comments, there were really three things that came out of here's what you could do. The first is to get some certainty around fees. That there are developers with money who don't have to go to the banks who are considering projects in San José. In fact, a billion dollars' worth of those projects. And each of them, it's a tough sell to their -- internally because the economics are not great but they're look out two years. And knowing what the fears going to be is really important to them, in order to make the internal decision to spend their money. And so I'm going to make sure that we have the authority to give them a number on fees that we can live with. And not just give them an estimate that might change in six months or a year. And so I know that I think Ru's been in touch with your staff how to do that. But that's one of the things certainty. They said a \$100,000 swing here and there can make a difference on some of these projects. Of course we are talking projects that have fees in the millions, potentially, but being able to give them certainty and then live with it was really important to them. The second thing that was really important to the housing developers was the impact of the palmer case on the requirements on affordable housing. And they're very much interested in moving ahead because it really changes the economics that they're looking at but they also know that things can change and that if they start down this road now, spend a lot of money and then the palmer case is overturned, the legislature does something or whatever they could be in the middle of a project and have the economics change dramatically. We need to know how we're going to handle the palmer case as it applies to rental housing and try to figure that out quickly. Because in all these cases they have choices, places where they're going to spend their money and it doesn't have to be in San José. They want it to be in San José but they have other places. And then the third one was for new developments for new companies. There are apparently five or six major tech companies with space requirements that they need to meet in the next 18 to 24

months. But a lot of them, brokers and these are the ones who are doing the shopping, think that we only want 14-story buildings in North San José. That's the message that they've gotten out of the North San José plan update. I think that's the incorrect message, but it's something that we need to deal with so they understand that there's many opportunities in North San José, not just to put up 14-story buildings which we would welcome but that is apparently not where the market is right now. None of the tech companies are looking to do what Adobe did. They are more interested in doing what Cisco has done or what Brocade has done. And so we need to take a look at that and figure out how we can make sure that we're communicating the vision of North San José and the opportunities of North San José to the development community and especially to the board of directors who are the ones that are trying to convince their companies to take one of multiple buildings. So what I'd like to -- the question I have with all that lead-up is from City Attorney and from Laurel is, you got all of these things, how do we prioritize the work that needs to be done? How do we assess what is likely to be the most effective? And how do we use your limited lawyers and your limited planners to do that, in light of all the goals and the specific things we've already directed you to do? Because what I'd like to avoid is having to go through the getting families back to work process where we end up with 140 different initiatives and we all work on them very hard. I don't think that's the best way to use your resources. So we have a -- this committee, we've got the CED committee but how do we just not start working on everything and prioritize it so we can get the work done? Because every ordinance code update requires a lot of work. We know that. And the last time I heard the count it was 28 assignments to your ordinance, your vast ordinance staff of one person, Rick.

>> City Attorney Doyle: Yeah, and it really -- and that's why I made the comment that not all ordinances are alike and some are more complicated. Clearly when we get council direction that this is a priority that's what we put at the top of the list. The sign ordinance for example, despite the fact it's taken forever to get it done, it seems. That was a very thoughtful process, we went through numerous council processes but now we're in the assistance of an outside counsel to help us with the final product. We made changes along the way we tweaked it to meet immediate he needs and we can do that. Number 2, I'm looking at number 3 and 4. Number 4 seems relatively easy. The way I read this is the entertainment section of the code was modified to exempt hotels for these types of permits. But the zoning code doesn't have the similar exemption. And I think it's an exemption an exemptions are always easier to write. I'm not going to say -- without going down that road than drafting a whole new

ordinance. That is something I think is probably the one that is the quickest but we would want to talk with planning staff as to the approach. Number 3 is a little bit more -- requires a little bit more thought and I think it's something we are going to want to confer with staff and come back ultimately to council with different approaches. Right now it's an evidentiary burden as it's presented. I think from a policy standpoint, how we apply the current ordinance and how we apply people approving whether they're legal nonconforming, it's application of the current process and we can work with staff with that, and ultimately if we come back with an ordinance to codify to make sure it's there, and we are bound by it, or as a policy, which is we're bound by it, but there's a little more flexibility in terms of change, that's something we'd probably want to confer with. But that takes probably a little bit more thought than just the exemption. And I'm just -- again, I'm thinking out loud here. In terms of the other 28 off the top of the list, these are going to be coming down the road. Some of them like medical marijuana we're waiting for the voters in November. That will come back. There's still cases pending in the course and I think it's going to be an evolving process. That doesn't have the same priority in my mind as some of these economic incentives that we're trying to provide.

>> City Manager Figone: One other dimension I would add for example to number 4 technically and from an ordinance drafting perspective, it may be straightforward but I think the benefit of vetting this out in the committee a little bit would be how much outreach would be sufficient in order to make this change. And it may be that you know the stakeholder group is rather limited and it's not an extensive outreach process and so if everybody agreed on that then the drafting you know can unfold. So I agree with Rick, not all are -- all ordinances are created equal but it's when you start getting down into who is going to care, that I think then you can really assess the time and the workload. And -- so that's just what I would add to those comments.

>> Councilmember Liccardo: Mayor may I offer a perspective? I agree with much of what's been said so far. I recognize none of these ideas are going to have the impact of a Brocade, or -- these are items that are -- were really put forward in this format, under the hope that there would be something of a quick-fix, may or may not require ordinance change, may or may not require something memorialized. Although I submit having something in writing in some format would help at least for businesses to understand with clarity and have clear expectations. I agree that the proper venue for this, it's Councilmember Pyle's committee. If staff were to take the

approach of the path of least resistance in terms of how they would quickly implement these items without an encouragement amount of work, if the committee and ultimately the council decides, we want more, then a more serious workload would be required. But it seems to me that I've had significant discussions with Joe, and Rick, and Laurel, and other folks about all these items. And so none of this is surprising, I think everybody sort of sees it coming.

>> Mayor Reed: Anybody else?

>> Laurel Prevetti: Just if I could, just wanted to at one thing, in terms of all of the priorities that are starting to come forward with respect to development services, whether it's how we get the message out there for the true vision of North San José, so people can make investment decisions. There are a lot of parallel things that are moving and so one of the things we would like to do is organize all of these ideas and strategies into essentially a work plan, so you can see what is the progress that's being made, in light of the council direction that we were given in the spring, and also, in light of this particular memo. So that way, we can track our progress and also, again, acknowledge what are the things that may need to wait until next year. But I think we, again, need to bring it together, pull it together as a cohesive work plan, so that way it's very clear that we are make process improvements for development services and then weave in the ordinance changes as well. Because right now I could see how the public would view this as essentially a scatter approach to development services and it's actually much more thoughtful than that. And so we need a vehicle to communicate that back to council.

>> City Attorney Doyle: And lastly Mr. Mayor, you mentioned the Palmer case which is an inclusionary requirement case that where rent control pre-empts that, and we have amended the redevelopment agency's policy, inclusionary policy to reflect Palmer but just if I can -- from what you're hearing it's not clear to the development community how we're approaching that. And that's something that's a communication issue. There are some cases that we have existing contracts and the question is, does palmer override those contracts. That's something we need to get back to you quickly on. But we should either update council or get the message out to staff as to what the state of the law is, and so those projects know with clarity whether to move ahead or not.

>> Mayor Reed: Well that's a really important question, because I can count \$600 million worth of projects that are waiting for that answer before they move ahead. These are people with money who would like to break grounds immediately because they think two years from now is a good time to be renting apartments. So I just want to make sure that we're not sending you off to do a whole bunch of things without having a chance to think through workload, the assessment and the prioritization. So I don't want to put it on a CED committee agenda and you got to go sort of do everything. Because I want to make sure we're doing the most important stuff first and the time sensitive stuff first and not just working on 100 projects.

>> Laurel Prevetti: Well, we are working on the most important things first, which was to get the project expediter position filled. So that was filled, he started officially yesterday in his new role. So that piece is moving forward. The administrative hub is moving forward, in terms of how we can better handle our overall budget for development services. We are moving forward with other ordinance changes to promote economic development, and of course the council was generous this past budget time to allow us to have additional resources for expedited services down in our building tuition. And all those service lines are in place. So we are moving forward in terms of service delivery. What we would like to do is come back with -- to committee, to CD committee with what's our plan for the remaining piece of the work and how does this new referral fit into that. So that way, you could see where those priorities line up, how are we communicating back to the development community about our progress, that we are open for business, and that where -- what are some of the choices, what are the choices as it relates to the legal nonconforming, that's something that we would work very closely with Rick and his staff, and then what are the choices as it relates to the conditional use permit. And there are some paths of least resistance, but I also know that I've talked to some others around this memo just in the last couple of days, and that there are other stakeholders who also have an interest in these matters. And so as we do bring these items back to committee, we want to make sure that those other stakeholders also have a chance to be part of our process.

>> Mayor Reed: Okay, why don't you make sure you include in this work as you're evaluating that and coming back to committee, the Palmer case, the certainty of fees question and the North San José policy question. And to quote one of the most successful brokers in Silicon Valley, San José is not even on the tour for major

developments, because they think we're going to require 14-story buildings in North first Street. So we've got some communications there. And if we're not on the tour, that means the companies aren't even going to think about us. We're not going to get an opportunity to do another Brocade kind of thing. I want to make sure that those three issues are included in your thinking about what to do and how to do that. Anything else on this? I guess we need to get a motion to assign this as staff has recommended here in this outline. Let's have a motion from Judy?

>> Councilmember Chirco: Or from Nancy. I will second it. But I have a question on the -- the gentleman that was appointed kind of the conflict resolution. You made a -- to be sure and the driving industries that -- I'm also concerned about the individual small business owners, family remodels, that we have a strategy that allows them, because the truth is that is our community and that's what we do to exist, not just to serve those who can pay fees but those that come in with the smaller, also deserve some kind of resolution when problems come up.

>> Laurel Prevetti: Absolutely. And that's really where, on the building permit ticket, when we issue it, we have the name of the supervisor, and their direct phone number on the ticket. So if they feel they're not getting the service from our inspectors, they can easily call our supervisors, and we've used that quite a bit. It's about how do we make our customers feel comfortable, our contractors to actually utilize that. We also have supervisors who are proactive in reviewing the inspection slips and they are also calling some of those homeowners to make sure they're getting the service. It's certainly -- it's our bread and butter. We have so many homes that are now being reinvested that we do need to provide good service delivery to really all of our customers. And so we've tried to institute a few things. It may not be perfect, so we're going to get out there and try some additional items as well.

>> Councilmember Chirco: I'm grateful for that. One of the things I've always been interested in is the integrity of our existing housing stock. So to make that something that is a priority, to not just the additional housing stock, but to maintain the existing housing stock. With that I will second Nancy motion to direct this to CED as outlined in the previous conversation.

>> Mayor Reed: Okay, I have some requests to speak, one anyway, Mr. Wall.

>> David Wall: With reference to item number 1, the differing opinions of building inspectors, city inspectors, is a chronic problem that's gone on for years. So I appreciate the administration's position that they want to tighten this up but there is an element of disingenuousness about it that's been going on as long as I've lived in downtown. With reference to this legal nonconforming uses, the term continuously is vague insofar as it applies to the downtown liquor stores in neighborhoods. These downtown liquor stores that are nested within district 3 neighborhoods are a public nuisance. You know they, after a certain hour of night they attract a certainly clientele, even during the day, some them. This needs to be looked at as to how they're allowed to do business and what hours for the restriction of this alcohol sales in total, because they just serve certain clientele that degrade society, insofar as somebody just wants a couple of beers after work. This also causes me concern for this hotel issue. The hotels could end up becoming public uses with this addendum. All this needs to be ferreted out very cautiously in my opinion because of the ancillary effects to neighborhoods, the established neighborhoods. The actual cost of doing business is, too, with reference to talk (inaudible) cost is way too low. These liquor stores for example make enormous profits. And for the mere \$150 that they spend per year, that is not commensurate with the cost of services the city has to provide to deal with the nuisances they create. So you might want to reformulate your business license. Thank you.

>> Mayor Reed: That concludes the public testimony. We have a motion to approve the staff recommendation. All in favor, opposed, none opposed, that's approved. Thank you we will move on now to the auditor's office monthly report of activities for August. Sharon Erickson is with us.

>> Sharon Erickson: Sharon Erickson, City Auditor. Very briefly, you'll see from this report we issued one report during the month of August. It was our semi annual review of the city's investment program. We attached that report to the back of the finance department's quarterly investment report. It was released in August. Also, scheduled for the September Public Safety committee meeting is our audit of procurement card transaction. And then I wanted to point out that for October we have a lineup of audit recommendations status, take-home vehicles, pension sustainability, and potentially airport concessions. The pension sustainability audit, we are working with the administration to do a possible early release of that report, so it would be something before the

October PSFSS meeting, so that it could go as information to the general fund deficit elimination task force -- I think I got the name of that right -- when they begin meeting on September 29th. I also did want to point out number 9 on our report, does confirm what I said earlier, that we're beginning our audit of Team San José. We do expect that the scope of that audit will be larger than it has been in past year in order to encompass the issues that have recently surfaced with the notice of default and Councilmember Liccardo's memo as well in the referral. And that's reply report for this month.

>> Mayor Reed: Questions. It's good to see you haven't run out of work yet.

>> Councilmember Constant: Motion to accept.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion is to accept. All in favor, opposed, none opposed, that's approved. We have two items related to -- I'll take them both together, that's items 5 and 6. That's approve a District 2 job resource fair as a city-sponsored special event which authorizes acceptance of donations, approve a District 2 job community fest as a city sponsored special event, again to authorized acceptance of donations, both requests from the City Clerk for September 14th council agenda.

>> Councilmember Chirco: Move approval.

>> Councilmember Pyle: Second.

>> Mayor Reed: Okay, motion is to approve, all in favor, opposed, none, that's approved. Next item is appeal of public records act request, considering an appeal by letter from Nicholas Todd Shackelford for police records and 911 recordings for an August 2, 2010 event. We have a written request from Mr. Shackelford that is part of our packet and we'll let our city staff comment on this first.

>> Lisa Herrick: Yes, good afternoon, Mr. Mayor members of the committee, Lisa Herrick city attorney's office. With me here also at the table is Sergeant Fred Mills from the police department, and he deals with the public records act requests and the research and development department at that time police department. The 911 tapes, the request for the 911 tape, is that information is exempt under the public records act and the department has provided a summary of the information that you would find by getting a copy of the 911 recording and listened to it, and then some because there's some CAD data that's available as well. The summary in large part is on the last page of the information provided in your packet. And we're happy to answer any questions but the position of the department is that the recording is exempt under the public records act and there isn't really any other reason articulated that would really I think, on balance, give the department a reason to go beyond what the public records act requires.

>> Mayor Reed: All right, Mr. Shackelford here? Does he wish to speak? I don't see anybody here answering that so I have some questions. First, and Mr. Shackelford's request, one of his reasons is that he believes that Mary converse made a false report to 911 because she was almost eight miles away from her residence. If someone does make a false report 911, what is the possible penalty for that, is that a crime to make a bogus call to 911 system? And is there a remedy if somebody is making false reports, false claims? And if so, you know, what's -- how does that happen? Chief Phon Gno.

>> Good afternoon, mayor, councilmembers.

>> Mayor Reed: Get to the microphone and pull it around.

>> If a person files a police report and during the investigation we believe that it may be a false police report what we would do is we would look into it, conduct investigation, and forward the investigation to the D.A.'s office for a review.

>> Mayor Reed: So it is a crime to file a false police report?

>> Yes, absolutely.

>> Mayor Reed: Okay.

>> Lisa Herrick: And Mr. Mayor, if I may, the summary, the report provided to Mr. Shackelford does state that the reporting party wasn't present, but heard it over the phone. Whether that is true or not, it does indicate that the reporting party was not actually present, which is consistent with what Mr. Shackelford said.

>> Mayor Reed: Right, but that doesn't necessarily make it a false report. I think in these 911 tape cases the threshold question is, what is the public's interest in release of the information, not what is Mr. Shackelford's interest in the release of the information. Because we're balancing the public interest in these matters. No matter how much an individual wants to do something, that's not necessarily in the public's interest, and it's our job here to try to figure out what the public's interest is in releasing this.

>> City Attorney Doyle: If I can add, there is a strong reason why these are exempt generally under state law. The state legislature has identified a combination of factors, one which is fear of retaliation, and a whole host of other things. We have debated whether or not we should release, this committee has said and the council has said on a case-by-case basis. But I think to your point, Mayor, is it in the public's interest to release this tape, and I think that needs to be controlling, given the fact that the legislature has established this exemption.

>> Mayor if I could add, the department's position is that it would create a chilling effect, it would discourage people from reporting crimes. In our experience many of these instances people would wish to remain anonymous when they report these crimes. And so if we were to release a 911 tape, it would create a chilling effect for people in the future to call the police department.

>> Mayor Reed: Is there an ongoing investigation in this matter? Because I remember we've had a couple of prior cases where we've been asked to release 911 tapes. And one of the issues was whether or not it might interfere with an ongoing investigation. And so that was sort of a threshold question. I believe in the Daniel Pham

case, we didn't release the tapes until the investigation was done. So in this case is there an ongoing investigation?

>> There is no investigation.

>> Mayor Reed: Okay, check that one off. Back to the what's the public interest in releasing this? Clearly the legislature has identified the public interest in not releasing it in creating this particular category. And I think the public has a great deal of interest in making sure people will call a 911 system and remain anonymous. Because I know that if people believe their name might be out there in the open, there's a lot of times they are not going to call. So in our neighborhoods that are plagued with gang activities, we want our residents to call the police department. They are the eyes and ears of our department. If they believe that gang memberships can come back in next week and say, I want the 911 tape for this incident or this date and this time, they're not going to call us, I'm quite sure they are not going to call us, and that would really be bad for public safety. So I don't see any substantial public interest in releasing this particular 911 tape. Certainly a lot of public interest in not releasing it. See what my committee members want to add to that, Judy.

>> Councilmember Chirco: This is definitely a layperson's question. It almost seems like it's more vindictive, because he already knows the name, she admits that she wasn't on site, and that is the charge in his letter. You know, in addition to everything the mayor has said, I really have to side with the legislature when they talked about you know, retaliation, and the chilling effect that the police officer mentioned.

>> If I may add, that this is a domestic matter, and you know potentially a domestic violence incident in the effect of the call itself, that needed to be investigated. And most of us, in the law enforcement industry, know that domestic violence incidents are very volatile. And we want to be able to allow people to call them in, without fear of retaliation, no matter who the caller is. And that releasing this recording on its face, you know, could cause a possible retaliation on the calling party's side. So --

>> Councilmember Chirco: I was going to make a motion.

>> Mayor Reed: Pete and then you can make a motion.

>> Councilmember Chirco: Okay.

>> Councilmember Constant: That was the point I was going to make, particularly in this case, with the domestic violence investigation at the scene. With all the effort that we go to, to reach out to the public, to make the public aware of the signs of potential domestic violence and encouraging people to report domestic violence, in a month from today we're going to be having our domestic violence awareness day and walk right here at City Hall, and encouraging people to be on the lookout so to speak for any potential domestic violence and to actively report. Because we know the only way that we can make an impact in the cycle of violence is with intervention from the outside. And clearly, if Mr. Shackelford really believes it's a false report he should make a report of a false report and ask the District Attorney to evaluate it for charges of false report. I don't believe based on what we've seen here it really qualifies but I really think that we do have to maintain the public's trust and maintain confidentiality is a people have the utmost confidence that they can be candid with the 911 operator and call when needed and even if they're wrong once in a while it's okay to call the police if you believe something's going wrong so they can be properly investigated.

>> Councilmember Chirco: So I would move to deny the request.

>> Councilmember Pyle: Second.

>> Mayor Reed: We have a motion to deny the request. Councilmember Pyle.

>> Councilmember Pyle: I just had one question, and this would be for Officer Mill. What do you mean by contemporaneous police activity?

>> Within the contemporaneous police activity that the department has established, the arrest log that we maintain in our records division, 90 days is our standard of contemporaneous police activity. The public records act allows a standard to be set upon with each government entity and that's the standard that we set.

>> Councilmember Pyle: Thank you.

>> Mayor Reed: We have a motion to deny the request. All in favor, opposed, none opposed, that's approved. The next item is an appeal by John Colby, Ph.D. for records of communications between the San José police department and other governmental agencies about a specific individual. We have some communications from Mr. Colby and a response from the police department and a supplemental from the appellant that have all been provided to us. I'd like to hear from the department I think first. Anything the department wants to add?

>> Lisa Herrick: I was just going to add, Mr. Mayor, that if I could direct your attention to the supplemental from the police department which was also provided in the packet. We -- sergeant mills has noted in second to the last paragraph from the bottom that there is no further information or records the department has. This really is something that may be more properly addressed with the District Attorney's office but in any event the department doesn't have any more information to provide than the summary that was already provided.

>> Mayor Reed: Okay, anything else?

>> Councilmember Pyle: Move to deny.

>> Mayor Reed: Let hear from Mr. Colby before we try to get a motion on his -- Mr. Colby here? No Mr. Colby. Comments or questions from the committee.

>> Councilmember Constant: I just wanted to make a comment that this request obviously goes a lot further than the previous request. But one of the things that really concerns me is, the scope of information asked between the District Attorney's, the conversations between the investigators and the District Attorneys and the -- I guess you'd

the work product or deliberative process of obtaining search warrants or warrants. And quite frankly there is a very clear public process in obtaining a warrant where the documents are filed with the court, everyone can see, go to the court and see the rationale that was used to obtain warrant and see the warrant itself, and that information is publicly available. And I don't believe it's in the public's best interest for us to be releasing this information. So I don't know if the motion was already made but if it was I'll second it.

>> Councilmember Pyle: It was seconded.

>> Mayor Reed: So the motion was to deny the request, I believe, and the second. As I understand the supplemental memo from the department this is kind of a moot point here because we don't have any more information other than what we've provided. But I do want to talk again since these will be coming in the future I'm sure of how we approach this and it's back sort of the question is, is there an ongoing investigation that this might interfere with, that is the threshold question, and I believe there is not, is that correct?

>> That's correct.

>> Mayor Reed: And then it would be a balancing test of what's the public interest in release of the information and what's the public's interest in not releasing it. We went through the discussion about the interest in not releasing it. What I'm trying to figure out is what's really going on here? Mr. Colby is not here to explain this but if we were to grant this request it seems to me anybody who wanted to could go to the police department and say give me all your communications with any government agencies, about, pick somebody, anybody in this room. So the whole opposition research business would have yet another source to get information about people. I mean, that's if you say you can have all this information back through the beginning of time, and that's a pretty broad request, and I don't know that I would want to set that kind of a policy that if somebody wants to do background research on somebody, dig dirt, or use curiosity, we should enable them to do that. We have the contemporaneous evidence rule so if there has been activity by the department that people can find out what's going on. If the newspapers want to write a story they can get the information and that can be done. But there really is a limit on how far back people have to worry about people going into their backgrounds. I think that's a

moot point in this case since we don't have any of that information. But it would be an interesting industry to start being able to go to every police department and ask for, let's see what you have on anybody. So am not sure I'd want to go there. We don't have to reach that level today, we have a motion to deny the request. Any further discussion? All in favor, opposed, none opposed, that's approved. That concludes our meeting. Open forum, we have no requests to speak -- oops, I'm sorry, we do have a request to speak. David Wall.

>> David Wall: This is a follow-through on billboard signs and how they provide habitat for creatures. I provided photographs for owls last year. The owls have returned. They are so vigorous that I don't venture outing too long at night for fear of being a smorgasbord item. Another issue that I would like to see the administration put forward to you is a plan to cut government, to fund the 49 firefighters that have been laid off. I'm not satisfied as a taxpayer with this Russian roulette with Public Safety. Firefighters are a unique type of employee. They are called to this type of employee. They are called to this type of service to enter burning buildings, risking life and limb and the possibility of burning to death themselves, to save us from burning to death. And I think that this Russian roulette stuff with pay cuts has to stop. It is the government's duty to protect the citizens welfare and safety. Everything else is secondary. There is a lot of money that has been wasted just today. Team San José, Ricardo Suvienda, other areas in the administration that could have funded the firefighters. I want some accountability from the administration as to this waste of public moneys and also a plan on what type of sectors of government you can cut. I have my opinions that have been put forth and there should be some from the administration, and there should be talked about in the press, because the firefighters are correct. There is money here at the city to pay for them. And they are a unique status because of this burning-to-death business. Thank you.

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