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>> Mayor Reed: -- this meeting to order. This is Rules and Open Government Committee meeting for June 9th, 2010. Any changes to our agenda order that we need to consider? No. All right, we will start with the June 15th council agenda. Anything on page 1, I think the start time we're going to adjust to 8:00 a.m.

>> City Attorney Doyle: I think that's right.

>> Mayor Reed: Will that be the earliest we ever started?

>> City Attorney Doyle: I think we did it last year.

>> Mayor Reed: Okay. I think last year was on the last meeting of the year. This is the next to last meeting of the year. So okay, 8 a.m. start time for closed session, 10 a.m. start of the regular session. And then we will keep going. We'll break for lunch and keep going until we're done after that more or less. Hopefully a dinner break. We hope there will not be a breakfast break, only a dinner break. Anything else on page 1? Page 2 or 3? Page 4 or 5? Page 6 or 7? Page 8 or 9? Page 10 or 11? I have a note that we need to change the date for the regulations pertaining to medicinal use of cannabis, to defer until the 22nd. I think that's a good thing to do. Stakeholders just got the information a couple of days ago. Anything else on 10 or 11? 12 or 13? 14 or 15? That's good to see that we're not holding everything for the last meeting. A lot of it out of the way on this meeting. Page 16 or 17 which starts the one and only general plan hearing item and then the other land use items. Page 18 or 19?

>> Excuse me mayor. On 11.2, we need to request a sunshine waiver for the legal documents. They were posted on Monday. But they just didn't make the Friday posting.

>> Mayor Reed: Okay, that's a rezoning on west side of north third street, relatively small, six units.

>> Yes.

>> Mayor Reed: Okay we'll need a sunshine waiver for that unless anybody objects. And then we have -- anything else on page 18 or 19? Page 20 and 21, are the joint City of San José-city council financing authority items, we have two ideas on although --

>> They're being deferred.

>> Mayor Reed: It's really just actions relating to the Orvieto family apartments, one item, a whole bunch of actions, you're asking for deferral until when?

>> The 22nd, June 22nd, and that's noted on the agenda.

>> Mayor Reed: Okay, anything else? I have a request to add traffic control program for outdoor special events and ordinance code amendment to go on the consent calendar. I have a request to add employee retirement contributions ordinance. Somewhere in the 3s. I assume that would come at the end after we've done the budget items as one of the implementing steps.

>> Right.

>> Mayor Reed: Any other changes or additions?

>> Councilmember Pyle: Move to approve the agenda.

>> Councilmember Chirco: Second.

>> Mayor Reed: Motion is to approve as amended. All in favor, opposed, none opposed -- yes motion includes the sunshine waiver. I would like to note for anybody who's watching that the budget related items we will take up together, not before two o'clock I think is the way we've set that up.

>> That's right and that's noted at the beginning of section 3.

>> Mayor Reed: And we'll try to get as much done before 2:00 as we can, take up the budget matters and then go back to the agenda, and plow through the rest of it. Until we get done. All right. That's the 15th. June 22nd. Draft agenda. It's always good to be looking at the last meeting of the fiscal year. June 22nd, anything on page 1? What time should we start the meeting?

>> I think we should start at 10:00. I don't know about closed session but --

>> City Attorney Doyle: Yes, medical marijuana, it's how long you think you think that's going to take.

>> A while. As the agendas go on you'll see that.

>> Mayor Reed: It's very long. So if we start at 10:00, what time do we need to start the closed session? We need to know that now, to alert councilmembers it's going to start early. Does it start at 9:00 or does it start at 8:00 or does it start at 6:00?

>> City Attorney Doyle: I think I suggest 8:00 again, and by next week's Rules if we have a better idea, we can move it up.

>> Mayor Reed: There will be probably no complaints if we change it from 8:00 to 9:00 or whatever we need to do. 8:00 then, for noticing purposes, start the regular meeting at 10:00. And then we'll -- as soon as we get through here we should talk about the morning session and what we should do then and what will specifically be in the afternoon. Anything else on page 1? Page 2 or 3? Page 4 or 5? Page 6 or 7. Page 8 or 9? Page 10 or 11? Finally at the end of the consent calendar, 32 items on the consent calendar, so that does look like the last meeting. Anything on page 12 or 13? We have some budget related actions which will basically be the final-final-final version of the budget documentation to be approved on the 22nd, to be heard before other actions including the consent calendar. Because we got to get all that final-final before we can --

>> Approve 10-11, actually.

>> Mayor Reed: -- do some of the other things, so would those be heard in the morning?

>> Yes, we can do that in the morning.

>> Mayor Reed: Otherwise we have problems on some of the -- lots of other items on here that flow out of the budget.

>> Councilmember Pyle: I had a quick question.

>> Mayor Reed: Nancy.

>> Councilmember Pyle: How many of these would require presentations?

>> Mayor Reed: Presentations --

>> Councilmember Pyle: If we could keep those down.

>> They're mostly under the transportation section. I think we only have two or three. And then probably medical marijuana may have an overview, some kind of presentation so --

>> Mayor Reed: Let's go on through and come back and look at those presentations and figure out when we ought to place them, anything else that we ought to do time-wise. So anything else on page 12 or 13? 14 or 15, we do have the regulations regarding medicinal use of cannabis, we should look at a time certain when we get to the end of this. Anything else on 14 or 15? 16 or 17? 18 or 19? 20 or 22? And then we have the page 22 and 23. We have the joint financing authority, Orvieto family apartments item.

>> Councilmember Constant: In my packet I have that on both agenda. Which one is it on?

>> It's being deferred from the 15th to the 22nd, so it appears on both.

>> Mayor Reed: That'll be cleaned up when we publish the amended agendas, right, that's the kind of things you take off on one?

>> No, it will just show as a deferral on the 15th. Currently the language is there. It will be deferred to the 22nd.

>> Mayor Reed: Then we have items that we are going to need sunshine waiver requests if we're going to get them on the June 22nd agenda, most likely. We have some items that were distributed on June 9th, already out.

>> Today, yeah, this morning.

>> Mayor Reed: Which is out this morning. That's an agreement for lease of property at 150 South 2nd Street. Some actions related to retiree health care, airport interim rental car parking lot demolition project, and authority to advertise the RFP for the convention center. Those are out. And then we have some items that are yet to be distributed. Various budget actions for fiscal year '09-10. Annual appropriations ordinance and annual funding sources resolution.

>> That's a final MBA pretty much.

>> Mayor Reed: For the budget that is the sort of omnibus wrap it all up get it into one place. And then our regulations regarding medicinal use of cannabis.

>> We anticipate all these will be out on Monday or Tuesday of next week. The second 3.X we need to hear the discussion on the 15th to finalize that final MBA so --

>> Mayor Reed: There won't be ten days on those but there will be basically a week at least on all of them except for the various final wrap-up budget stuff. Won't get out until after the council meeting on the 15th.

>> Right.

>> Mayor Reed: I have some requests for additions, mayor and council excused absence for Councilmember Campos from the neighborhoods services committee meeting, and ordinance relating to retirement benefit calculations.

>> City Attorney Doyle: Mr. Mayor on that second ordinance we'd ask for a sunshine waiver on that, as well.

>> Mayor Reed: Any other changes or additions? Let's go back and think about presentations and timing of things. Probably the largest possible time sync will be the medical marijuana item.

>> We were thinking of a not before 3:00 on that item. And I was just chatting with Gary and we thought the redevelopment agency should be heard first in the morning, get that out of the way and then go to the council agenda. He is thinking 15 minutes?

>> Our agenda has one presentation that could be 15 to 20, everything else probably five to ten. 20 to 25 at the outside.

>> Mayor Reed: We should be able to get that done in the morning. That's what we're doing on the 15th I believe, redevelopment agency is in the morning.

>> That's correct.

>> Mayor Reed: We don't have an evening agenda but we certainly have enough work to drive us -- to takes into the evening. The question is how much do we want to get done before we take up the medicinal use of cannabis

regulation pieces. We start at 10:00 we'll get pretty well through this, we might get through the consent calendar. Other items that will have significant staff presentations? That we haven't --

>> Getting through this.

>> City Attorney Doyle: Mr. Mayor, the item 3.4, which is the City Auditor's presentation on card room policy, that has been through council quite a few times, I don't know how long it will take of council's time but she'll want to make a presentation.

>> Mayor Reed: But that will basically be your standard auditor's presentation, she'll be fairly brief about that, the committee's heard it a couple of times so I know it's been worked on. Well, if we say not before 3:00 on the cannabis, that would probably make some sense. But we need to think about if that's going to take a long time, do we want to try to get everything else done before we take it up. So it's essentially last on the agenda. That's the way we had done it for the 15th, contemplated it for the 15th. So if we say -- if we say it's going to be last on the agenda do we want to say not before 3:00 or not before 4:00? We're starting at 10:00. That's three and a half hours of council meeting before 3:00.

>> Councilmember Constant: I would rather say 3:00 because I would rather have people wait a little bit longer than us have to take a recess. And I'm an optimist that we're going to get it done by 3:00.

>> Mayor Reed: Let's do that, let's put it last on the agenda, not before 3:00.

>> Not before 3, okay.

>> Mayor Reed: I know staff's out working with the stakeholders and I'm quite confident that there will be no public testimony on this when it finally gets to the council. Just an optimist.

>> Councilmember Constant: I won't make a smokin' joke about that one.

>> Mayor Reed: Anything else? We have some sunshine waivers that we talked about, there have been some changes.

>> Councilmember Constant: I'm ready to make a motion to approve the agenda as amended and the sunshine waivers as requested and the time certain as noted.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion is to approve. All in favor, opposed, none opposed, that's approved. Taking us to the redevelopment agency agenda for June 15th, again, that's going to be heard on the morning, on the accelerated schedule. Anything on page 1 to change or discuss? Page --

>> No changes there. We'll make one alteration to show that we're following not the financing authority but the consent calendar.

>> Mayor Reed: Okay. Anything else on page 2 or 3? Page 4 or 5?

>> Mr. Mayor, if I may, the item 8.2, the inclusionary housing policy, we are going to request a sunshine waiver of the 10-day waiver, that item has not yet been published, and we're working to get it signed and published this week.

>> Mayor Reed: I thought we had published that and had it on the agenda once before.

>> City Attorney Doyle: Yes, this is an issue that was fully -- the memo was provided. Council asked to us go back in light of some requests -- law foundation of Silicon Valley had raised some questions, and we went back and met with them, and we're coming back now with the supplement.

>> Mayor Reed: Okay. I thought there was already a lot of information out there. Any other changes to the redevelopment agency agenda agenda?

>> No other changes required.

>> Councilmember Pyle: Move to approve as amended.

>> Councilmember Constant: Second.

>> Mayor Reed: Motion includes the sunshine waivers?

>> Councilmember Pyle: Yes.

>> Mayor Reed: All in favor, opposed, none opposed, that's approved. June 22nd redevelopment agency agenda. Again, it will be heard in the morning. We're looking at an 8:00 a.m. start time change on that and the time for the regular session would be changed to 10:00. Anything else on page 1?

>> That's the only changes required on page 1.

>> Mayor Reed: Page 2 or 3? Page 4? Neither additions nor changes?

>> No, sir not at all.

>> Councilmember Pyle: Move to approve.

>> Abi Magamfar: Mr. Mayor, item 8.2 should say FY 2010-11 cooperation agreements rather than 2009.

>> Mayor Reed: That's just in the bold line of the agenda item.

>> Councilmember Pyle: Move to approve as amended.

>> Councilmember Chirco: Second.

>> Mayor Reed: We have a motion to approve as amended. All in favor opposed, none opposed, that's approved. Indemnity item is state and federal legislative update. Betsy Shotwell is here to talk about state and federal.

>> Betsy Shotwell: Thank you mayor, Mr. Chair, members of the committee -- I'm sorry.

>> Councilmember Constant: We don't have to approve anything on Monday night public hearing on the budget do we?

>> Mayor Reed: Yeah, February 14th is a hearing --

>> Councilmember Constant: July.

>> Mayor Reed: February -- [ Laughter ]

>> Mayor Reed: February 14th once was a hearing. June 14th hearing just on the budget, one agenda item and that agenda's already been published. We don't have to do anything further on it. Okay. Moving on back to legislative update.

>> Betsy Shotwell: Thank you mayor, Members of the committee, Betsy Shotwell, director of Intergovernmental Relations. It's that time of year, you may recall, this is the time when we want to get as many bills we can before you and the council prior to the break in July. I'm grateful this year that we have been able to use the expedited bill process a few times. We may have to use that in July, but you'll be kept informed if we do, and we'll obviously

bring it back to you in August. But going to the agenda today, the first item brought forward from the redevelopment agency is a recommendation to affirm the City's support -- excuse me, opposition, SB 974, the income and corporation tax hiring and career credits. This would create this new tax credit, but by doing so would eliminate the target in employment area categories from the environmental -- excuse me -- enterprise zone eligibility categories for the hiring tax credit program. We were informed that this bill was moving quickly, we utilized the expedited bill for this and in consultation with obviously the redevelopment agency director, the mayor's office and city attorney's office and the counsel to the agency, staff is here to answer any questions that you might have. It has passed the senate, 21-16 and currently in the assembly awaiting assignment.

>> Mayor Reed: Questions? Judy.

>> Councilmember Chirco: I just have question, because I wanted to know what it was. We did some research on it. Because Steinberg is usually a thoughtful legislator.

>> Betsy Shotwell: Yes, and we do not like to oppose his legislation.

>> Councilmember Chirco: And I just had a question. The argument in support says it's more important than ever to prioritize investments and ensure tax credits are producing a beneficial return on the State's investment. California suffers from too many high school dropouts, too little meaningful career path programs, bring greater returns on the state's tax expenditure investment. I can understand we have an enterprise zone but I was wondering what does the new proposed create that we're not getting with the other one? And so that's why we did a little research and I was wondering if you could help me understand how what we have is more beneficial than what is being proposed under here.

>> Betsy Shotwell: All right, thank you.

>> Abi Magamfar: Madam vice chair, Yolanda Lee who manages the enterprise zone is here and she'll be able to explain that.

>> Good afternoon, my name is Yolanda Lee and I'm the program manager for the enterprise zone. And to answer your question, the enterprise zone targeted employment area provides an opportunity for residents of San José that live in low income neighborhoods to be given an incentive to be hired by employers. This is one of the most popular categories that we use to encourage employers to hire from those low-income neighborhoods. And while we understand that creating career paths for middle school and high school is a good idea, however it would be at the expense of creating jobs right now for our low income neighborhoods.

>> Councilmember Chirco: So when Steinberg put the -- because they're using funding from one source to fund a new source, what was his justification for taking job path away today, when we need jobs, jobs and more jobs?

>> Betsy Shotwell: I can't really say other than probably like so many looking for funding potential. And this was an opportunity that was brought forward and --

>> Councilmember Chirco: I just -- I wanted to ask the questions because the memo from the RDA didn't really cover the pros of the existing one versus the cons of the new one and what was the -- how one helps San José now versus what the new legislation was proposing.

>> Mayor Reed: Staff is being polite, as they are wont to do. Let me just be a little more blunt. The legislature often confuses the difference between job creation and training people for jobs. And there are many, many, many efforts to fund training. And this is really another training effort, a career pathway which is certainly important but it's not the same thing as creating jobs. And the tax credit as it's used by our businesses is directly related to creating jobs. Which of course these people might qualify for. Might be able to go into. But you have to have the jobs, because it doesn't matter how many people you train, if you don't have the jobs. And it's really something that we ought to support, because it's directly related to creating these new jobs which these same people would be eligible for but you have to have the jobs. All the training in the world won't work if you don't have the jobs. So that's why I would support this. And politely disagree with the legislature on that. But there are many other efforts to create training programs.

>> Councilmember Chirco: That was perfectly understandable and not rude at all. Thank you. [ Laughter ]

>> Councilmember Chirco: Then I would move the staff's position.

>> Councilmember Constant: Second.

>> Mayor Reed: Motion is to approve staff recommendation on that one. All in favor, opposed, none opposed, that's approved. The next one.

>> Betsy Shotwell: Thank you, Senate Bill 1107 by senator Kehoe. Water quality, interceptor and trap grease. This would attempt to put some teeth into the regulation of the companies that pick up, haul, drop off brown grease and creating some new criteria. It passed the senate 22-13. It's currently in the assembly and staff is here from environmental services department to answer any questions that you might have.

>> Mayor Reed: I notice that grease is a contributing factor in 64% of the sanitary sewer overflows.

>> Councilmember Chirco: Move approval.

>> Second.

>> Mayor Reed: It would be nice to get rid of that problem.

>> Betsy Shotwell: And with the one week turn around please. With all of these it will be June 15th.

>> Councilmember Chirco: That's added.

>> Mayor Reed: We have a motion to approve. All in favor, opposed, none opposed, that's approved. Next one, AB 1784 I think.

>> Betsy Shotwell: Yes, thank you. This is authored by the Santa Clara Valley Transportation Authority allowing them to have the authority to enter into agreements with cities, basically smaller cities in Santa Clara County to do improvements, and they're asking all the cities to indicate support. The Santa Clara cities association, as well, has indicated support. If there are any questions, staff is here.

>> Councilmember Chirco: Move approval with a one-week turn around.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion is to approve. All in favor.

>> Betsy Shotwell: I should add this was one that the expedited bill process was used.

>> Mayor Reed: All in favor, opposed, none opposed, that's approved. Next one AB 2064.

>> Betsy Shotwell: Yes, 2064, by assembly members Perez and bass, having to do with emergency shelter operations grant account. This bill, if passed, would attempt to keep the funding, very critical funding to the city from being transferred over to the General Fund. The director of housing is here to answer any questions. It passed the assembly 60 to 16 and is now in the senate.

>> Councilmember Chirco: Move approval.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion is to approve. All in favor, opposed, none opposed, that's approved. We have a couple of federal items.

>> Betsy Shotwell: Yes, and again, the director of housing is here, and she may wish to comment further. But it does have to do with extending the low-income housing tax credit, through legislative efforts. And this is -- many of these types of issues are in play right now, and I will have a federal report next week on additional legislation that will be of interest to the Rules Committee and the council.

>> Mayor Reed: Leslye Krutko.

>> Leslye Krutko: Thank you, mayor, Leslye Krutko, director of housing. Just briefly, one of the things that have happened in the low income housing tax credit market because of the economic situation is that there aren't as many players. Fannie and Freddie went out of the tax credit business, as did many other major investors. And the basic premise of the low income housing tax credit is, you have to be profitable to participate. And a lot of the businesses that were in the business are no longer profitable. So what a couple of the things that these bills would do, one is, it has what's called a carry-back provision, which allows businesses to go back five years, instead of right now they only can use the current year and the past year as far as looking at their profitability and having a tax break. This allows you to go back five years, which will increase the number of players that can participate. And there's also a provision called an extender provision which is going to extend the tax credits to some other efforts that have been successful recently, again, increasing the number of players in the low income housing tax credit market.

>> Councilmember Pyle: I would move approval.

>> Councilmember Pyle: And I would second.

>> Mayor Reed: Motion is to approve.

>> Councilmember Chirco: And with a one-week turn around.

>> Betsy Shotwell: Thank you. Patton Boggs did indicate this morning in an e-mail that our two senators, Feinstein and Boxer, have joined on to 3326 as the primary vehicle.

>> Mayor Reed: What I can recall about affordable housing projects is, if we don't have these tax credits, not many of them are going to get built.

>> Betsy Shotwell: That's correct, they all need it.

>> Mayor Reed: They all need it. The motion is to approve staff recommendation. All in favor, opposed, none opposed, that's approved. They will all be on next week's agenda so they get done immediately.

>> Betsy Shotwell: Thank you.

>> Mayor Reed: Next is the Public record. Anything in the public record the committee would like to pull for discussion, Councilmember Constant.

>> Councilmember Constant: I briefly wanted to pull item B, the letter from the senior commission. The senior commission has had a long standing practice of allowing commissioners who were active to stay on in an emeritus status. But evidently there's been it may be a long standing practice but I don't think it's been a long standing policy. So I know this has caused some consternation at the commission level. And I wanted to see what we could do to address this. And my concern is, we have a lot of very active seniors who once they get into that position really become deeply entrenched in the issues. And then stay to continue serving in kind of an unofficial capacity and being kind of the many hands that help get the work done but don't necessarily have a vote in things. And I was wondering, if there's a way that we could continue to encourage that kind of participation, but I know it doesn't fall directly within our guidelines and where we stand with those who have been acting in that emeritus -- I don't want to call it category because it's not a category but in that -- create a category and obviously make sure that as we do the boards and commission review this is something that's lumped into there. So I don't know if you've had a chance to discuss it at all.

>> Mr. Mayor, if I could, Dennis Hawkins, assistant city clerk. We are actually working with the senior commission and staff to come up with an alternate method of honoring long standing commissioners. And the problem is, in reviewing the senior commission bylaws, they are inconsistent with the municipal code. And what's happened is there were two commissions that had created this emeritus status, only two out of the 40-plus commissions the city has. So in the routine review of some bylaws we found this practice. And so we have been working with staff of the commission and the commissions to come up with an alternate way of honoring those long standing commissioners. We would ask that this be referred to the structural improvement process for refinement and possibly coming back for a change to the code.

>> Councilmember Constant: Yes, I think that's definitely what we should do and one thing I would kind of like have kept in mind as we look at this is, it's something that kind of happened and it's happened within the commission. I do think it's a good category and I personally think it is something we should account for. But I think as we formalize it then we should have the appointments come through Rules and go through the council process just like everything else. I had just always assumed that it was a process, because it was there when I started and it has been kind of occurring. So I'm glad we caught the inconsistency but I hope we can find a way to preserve the functions we have going in the senior commission and perhaps whatever the other commissions are.

>> We are working on this.

>> Mayor Reed: I'm not sure I understand the whole question to begin with but I guess I don't have to understand it today, send it to the staff to look at. If you want to honor somebody for their past service when they leave, we give them a certificate, a plaque, a gold watch, a ring, or I don't know, there are ways to thank them for their service when they conclude. Having them -- or is it really not about honoring them, it's allowing them to have a role in the commission meetings, as yet another second commission full of former people who are being honored.

>> City Attorney Doyle: I think it's having ex officio members, and I don't think the code contemplates ex officio for any of the commissions. And so I think what Dennis is indicating is when we come back with part of the process, maybe council can consider ex officio membership as well. And that is just something that staff wants to refine.

>> Mayor Reed: Okay, I'm happy to let staff work on that but I'm not interested in making staff's jobs more difficult, more complicated and more expensive. That is part of the reason we're doing the commission review, is having control over the 40 boards and commissions, all the staff time it takes to manage them. Is it staff's recommendation to refer this?

>> Right.

>> Councilmember Chirco: I'll second that. I want to agree with the mayor, staff, the public is always welcome to attend.

>> Mayor Reed: Mr. Wall you wanted to talk about the starbird community center?

>> David Wall: First it's a pleasure to note that the rules committee will not change materially and congratulations is implied. First I don't know how these homework programs are orchestrated or designed. But these letters from these kids are very disturbing on a variety of levels. Some of these I will not make public comment on, but I will discuss it with Councilmember Constant offrecord because of some of the things I see in here. Things that aren't so bad, I mean, as far as that I will talk about is the number of games and pool and other things, I'm not sure where the crossover between a homework center and a community center where you have just fun begins or ends. So that's one thing I think needs to be looked at. Two, this form letter format by a community based organization, I believe it's called Community United, it could be innocent in itself, kid saying hey, you know, I like my community center. But there is a recurring theme that looks like it could be coerced or prompted, and that is evidenced in the writings. One other thing that bothers me, too, is the fact that it indicates there's a wide spectrum of basically illiteracy in these children and that's very concerning to me and it's nothing that Your Honors, well, you're trying to help out is what you're doing and this is good. But the use of kids cooking

food, and this is referenced by their own writings for other kids could be innocent enough on itself or it could require some form of standard hygiene practices that are unknown to the program. And so I would look at this because the writings of the kids speak loudly on a variety of levels. And if this is just indicator of one community center, it might be endemic to them all. Thank you.

>> Mayor Reed: Thank you. Any other -- I think that's all the testimony on the public record. I just had one comment, with regard to all the letters on the starbird community center my budget message which I published a few days ago, does propose keeping starbird community center open, along with five others of the community centers that were slated to close. I hope that will help these kids with their homework. We have a motion to note and file the balance of the public report. All in favor. Opposed, none opposed, that's approved. Appointments on boards and commissions, we have a recommendation from me to appoint Sajev Sidher, senior tax manager for Deloitte, to serve as a private sector representative on the Silicon Valley workforce investment network board of directors.

>> Councilmember Chirco: Move approval.

>> Second.

>> Mayor Reed: All in favor, opposed, none opposed, that's approved. Taking us to item H-1, request from councilmembers Kalra, Campos and Herrera, to have staff make some amendments to the municipal code regarding smoking in public. And I just got a replacement memo today from Councilmember Kalra and Campos on this item. Councilmember Kalra is here to speak to his memo.

>> Councilmember Kalra: Thank you, mayor and congratulations, mayor and Councilmember Constant.

>> Mayor Reed: Thank you, it's good to have it behind me.

>> Councilmember Kalra: And yeah, the replacement memo is identical, just have removed Councilmember Herrera's name from the memo. Otherwise, though, it is quite self-explanatory in terms of what it's requesting. It's requesting that that we draft -- that staff drafts an amendment to the current municipal code, regarding a couple different items, one being smoking in outdoor areas of restaurants until -- at least until 9:00 p.m. So that we can allow for families to -- and other patrons to enjoy a smoke-free dining environment. In a survey of local eateries, 83% of the establishments indicate they would not oppose a smoke-free dining ordinance, that was done by Breathe California, and similar ordinances statewide, proving to be not to be deleterious to businesses and in fact oftentimes increased businesses at some of the small businesses and clearly improve public health. Additionally, prohibiting smoking in public service lines, this is a newer movement we're seeing, where basically, atM lines, movie lines, places where people commonly wait in line, and I think that we all can probably recollect situations where people are smoking right in front of you, right behind you, and especially when there are kids around, it is something that's important for us to at least explore into changing. And then finally, there's currently a ban on enclosed areas that are public or common areas, multifamily residential areas, and this would simply remove the unenclosed portion just make it all areas that are public or common, so even outdoor areas that are open that are common areas which could include you know walkways, playgrounds, what have you, in multifamily housing. And it's not that much different than what we require in our parks. And I think that it's not as severe of a measure as some other jurisdictions where they actually ban even the private areas of individuals' residences. I'm free to answer any questions or allow for public comment and respond if there are any public comment.

>> Mayor Reed: I think we'll take the public comment first, there are two people who want to speak to this, Dennis Ocha and then Josh Howard.

>> Good afternoon, everybody. First of all, I'd like to state that I'm from Breathe California. I've been with Breathe California for ten years and this issue has been very important to me for many years. There is a lot of validity in regulating secondhand smoke in outdoor areas. Especially in areas where people congregate closely in dining areas, and atms like Councilmember Kalra mentioned. And there is scientific studies that support that outdoor pollution levels in these areas can be comparable to indoor smoking pollution levels. And this research can be accessed any time through Neil Klepeis, a Stanford researcher. Unfortunately, I was directed to come here from somewhere else so I don't have the research. I can send you all the research data that Mr. Klepeis has done. In

realtime measurement of secondhand smoke in those areas, in all, many common areas where people congregate, families and what have you. And these measurements his findings showed that pollution levels in these areas can be -- well, many times are as high as pollution levels indoor. And they definitely exceed EPA levels of certain particulates which do suspended themselves in the air especially when there is not a lot of circulation, they can stay suspended in the air for hours at a time. So I strongly support the proposal and also strongly encourage you to read the frequently asked questions based on this study that Mr. Klepeis did from Stanford. It's pretty recent and it's very compelling. So thank you very much.

>> Mayor Reed: Josh Howard.

>> Good afternoon, Mr. Mayor, members of the committee, thank you for the opportunity to be here. I'm Joshua Howard with the California Apartment Association. I'm simply here to request and set the context that when the city is facing a \$116 million budget deficit and you're choosing between parks, libraries, community centers, police officers, asking staff to go back and do additional work and additional research on items that do not fall right now under your core mission of providing direct services to residents should be something I would urge you to suspend or defer until such time as you have the opportunity and the staff resources to research such ordinances, develop such ordinances and then should you go back and adopt such proposals, have the staff resources and staff funding to implement, educate and outreach to impacted stakeholders whether they're restaurants in the downtown or Santana Row or multifamily housing operators. I would take exception with the memorandum where it says that this only requires a simple change to the municipal code to impact multiunit housing by striking the word enclosed from common areas. Quite frankly there would have to be some significant outreach that would have to happen to all rental property owners in this city. Unfortunately they are not all members of the apartment association. I would also suggest that this would require all rental property members to have to serve legal notice to all residents that there is a change in terms of their tenancy or their house rules and there would have to be a grace period for that to go into effect from the city side and from the implementation on the rental property owners' side. I'm in no way to advocate against -- no way advocate for smokers but I'm simply here to advocate on behalf we circulate look at reasonable balanced public policy in light of competing priorities and take some opportunities to recognize councilmember Williams for his leadership of this two years ago and passing a resolution encouraging smoke free environment in rental housing. Implement such measures --

>> Mayor Reed: Sorry your time is up.

>> That's fine, thank you.

>> Councilmember Kalra: Mayor, may I comment? Thank you very much and I appreciate the comments that were made and similar to when I was here recently in regard to E stewards memo, I was more than appreciative of staff, and staff and the committee suggested coming back in spring of next year, I have no problem with that, because I recognize we have a lot of competing issues, some of which are frankly more urgent and more, especially with the budget, we just don't know what our staffing levels will be. I'm absolutely respectful of that and will hear out a discussion in terms of timing. I do think this is an important issue. I think that you know oftentimes it is cities, the State of California has been in public areas of smoking has occurred after Pasadena became the first one in the world to put forth such a ban. And I do also appreciate the work of the former councilmember Williams and appreciate tri-county for supporting the resolution encouraging smoke free housing. Any standard tenancy agreement includes abiding by city code. I would respectfully disagree that it would require an overhaul of all tenancy agreements throughout the City of San José. I think that an understanding that all tenancies must comply with code is relatively standard. I do understand and appreciate that there would need to be some outreach. I have had an opportunity to talk to the downtown association during the course of putting this memorandum together and did not receive any opposition in my discussions with them. That being said I do think that just putting it forward and allowing the appropriate amount of time for staff to evaluate it, there's plenty of examples of these ordinances as well as allowing for a sometime for reasonable and appropriate outreach to make sure that individuals that are stakeholders understand the consequences of it. But I think it's an important message for the completely and the safety of our community I think it's make sure that we have a safe environment for our community.

>> Mayor Reed: Thank you. I'd like to see staff do a workload assessment on this and bring it back to us probably in August. And I would add, in thinking about the work that might be required to do this, what impact

there might be if it also covers marijuana smoke. Because in November we have a measure on the ballot that may well legalize marijuana smoking. So I would perhaps add to the complements of the workload that might be done, get a workload assessment. I know there's probably 28 ordinances, it's in the 20s, ordinances already queued up to be worked on. I think that's an important factor, when you bring back the workload assessment, so we can look at some of the other assignments that are there. Some of them are important -- no, I'm sorry, they're all important to someone. That will be part of the assessment. Nancy.

>> Councilmember Pyle: One of the worst things you can do is come up with a law and it doesn't get enforced. It needs further work and maybe a committee is a good place to go after the workplace -- I mean the work assignment -- assessment. So I guess that would be neighborhoods committee? Or whatever.

>> Mayor Reed: Let's get the workload assignment, let's get back to here and then we can assess where it might fit into committee assignments and any other work that needs to be done by the staff. And for my opinion I wouldn't have the staff spend any time on this until we get through June 22nd. We just looked at a couple of big agendas. Bring it back in August in terms of doing a workload assessment.

>> Councilmember Kalra: Mayor, may I ask a question, currently it's illegal to smoke marijuana anyway. My question is do you think it may be appropriate to treat that separately after November because of move ballot, if that passes then we're not just talking about these minor ordinance changes, we're talking about how the antismoking legislation in general we have throughout the City of San José then applies to marijuana.

>> Mayor Reed: I don't know. It is a complicating factor the staff should look at when they do their workload. When they come back in August they may say hey, that's way more complicated and just treat it separately. We need staff to figure it out. Judy.

>> Councilmember Chirco: When you look at the workload assessment I think you should also look at how much staff time it would take to partner with the Tricounty Apartment Owners Association on some of the obstacles and challenges to the unenclosed areas and common areas is quite a burden which our property owners pay for right now. And this would be an additional layer so looking at what they have to deal with, would be an important part of the workload assessment.

>> Mayor Reed: Anything else on that? Ed, do you want to defend the staff work?

>> Ed Shikada: Only express on behalf of staff the appreciation of the committee and the councilmembers bringing forward the memo sensitivity to the workload and the need for staff to, one, get through the budget and then go through and think about this thoughtfully.

>> Councilmember Kalra: And Mayor, if I could add just one last thing in addition to what the Vice Mayor indicated, in addition to the apartment association, as well as connecting with breathe California as well as the downtown association might be helpful, in order to just engage the workload assessment and in the future gauge what kind of steps will be necessary to make sure this would go forward in appropriate manner.

>> Councilmember Constant: I just want to make sure we don't create a bunch much staff work because the workload assessment is to decide what staff work needs to be done. Because there's also the restaurant association and all these groups that we need to adequately reach out and look at. All the ones have been discussed plus the ones Josh brought up. I personally think it should be more of a workload assessment and an identification of what will need to be done when it's done. But none of that work actually done yet. Because there's so many things going on and I'd like to see kind of -- every time we get one of these ordinances here, a list of which owners are in line, which ones would be bumped, where it would fall, what the time would be, what the volume of work is expected to be, and then we can decide what process, what committee, and how we want to go forward.

>> Mayor Reed: I think that's what we need to do. Anything else on this? Is there a motion?

>> Councilmember Pyle: Move to approving.

>> Mayor Reed: Having staff do a workload assessment bring it back in August.

>> Councilmember Chirco: Second.

>> Mayor Reed: That is the motion. All in favor, opposed, none opposed, that's approved. The next item is the District 2 Edenvale technology park 2010 business appreciation event, request to designate it as a special event, so that we can accept donations of materials and services and other things under our policy.

>> Councilmember Constant: I'd like to ask the councilman a bunch of questions -- just kidding. Motion to approve.

>> Second.

>> Mayor Reed: Motion is to approve. All in favor, opposed, none opposed, that's approved.

>>> Another request to approve cosponsorship of National League of Cities public safety and crime convention steering committee meeting as a city-sponsored special event so we can expend city funds and authorization to accept donation of materials for the event on June 22nd council agenda for action. That's from the City Clerk.

>> Councilmember Constant: Yes, thank you, mayor. This actually originated from my office. I sit as a member of the Public Safety and Crime Prevention Steering and Advocacy Committees at the National League of Cities. And we were fortunate enough to get them to choose San José as one of their locations to hold one of their quarterly meetings. I just want to make clear that most of what will be, will be accepting donations, not expending city money. And perhaps the city involvement might be use of this committee room or other rooms as needed. But there's not anticipated to be any city funds connected with this, and I make a motion to approve.

>> Councilmember Chirco: Second.

>> Mayor Reed: All in favor, opposed, none opposed, that's approved. There are no other items on our agenda. Next thing is open forum. Mr. Wall.

>> David Wall: I just wanted to show you, one thing from a neighborhood watch, as opposed to the testimony I gave yesterday that is unique. This is a ceremonial for the fallen police officers that occurred earlier in May. What's unique about this is, one, why was I the one who found it out in the street? Neighborhood. It contains the original writing for the prayer by police chaplain. So the power of neighborhood watch is profound, in what you find in the streets, with reference to a drunk requiring two separate San José fire department responses to take him to the hospital. You should make, in my opinion, very -- thanks to fire station number 1 because they were involved. I did not report the incident. I just observe and report this stuff. I mean, to you. The fire department -- a variation of the drunk in public ordinance should include what happens if somebody calls in 911 themselves and they're drunk on the public street, does it apply? Well, of course I think it does. And this will be returned in its entirety to the police department. This is profound, you'll find the actual original handwriting of the police chaplain. The other thing that really bothers me on another specific issue is there was a big guy that wears bib overalls, that warned the city repeatedly about Mercado Suvienda. I hope to see some form of regime change by people that make decisions that cost this city \$500,000. This old guy in the bib overalls, he warned you. I've seen it, it was in writing.

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