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>> Mayor Reed: Good afternoon, like to call the meeting to order. This is Rules and Open Government Committee meeting for February 15th, 2012. Any changes to the agenda order? Then we will start with the February 21 council meeting agenda, no meeting because of the holiday. Any changes on page 1, back to a 9:00 start for the --

>> City Attorney Doyle: Yes.

>> Mayor Reed: Session, okay. Anything on page 2 or 3? Page 4 or 5?

>> City Attorney Doyle: Mr. Mayor, 3.5, this is the carryover on the tax measures. There will be some language changes because one of the referrals has to do with a proposed ballot measure for a bond for street restoration, and repair. And we have to get back on that as well as some further discussion about general versus special taxes. So we'll be tweaking the language but this just shows the item is coming back.

>> Mayor Reed: Okay. Anything on 4 or 5? Page 6 or 7? Page 8 and 9? Page 10 or 11? Will be afternoon evening meeting it appears. Half a dozen things on the agenda, how many of those are likely to last? Do we think these will go? On the evening agenda sometimes we lose them between this meeting and --

>> City Attorney Doyle: Three of the items are coming back essentially ordinances to -- as part of the streamlining, including one of the alcohol, offsale alcohol.

>> Mayor Reed: So those will be ready to go?

>> City Attorney Doyle: They are ready to go. 11.2 is controversial but it depends on the community I guess.

>> Mayor Reed: That got deferred from a previous meeting. I just wanted to see if we have anything left on the evening agenda, because occasional they fall off.

>> Councilmember Oliverio: Last time we had this question there was only one item. This time it is two more.

>> Mayor Reed: We lose a couple, so many of things on there. I wanted to go back to the IBM operations efficiency report, whether or not it would be proper to have the manager talk about using the data, using the report to begin to develop a work plan. One of the recommendations is to come back to rules in three weeks with a work plan. But I don't know if the manager will be prepared at the meeting to talk about the work plan because I think council may be interested at the meeting.

>> Ed Shikada: Very good. We are working on a supplemental that will be able to lay that out. So we could certainly --

>> Mayor Reed: Not that it would be a work plan.

>> Ed Shikada: Right.

>> Mayor Reed: But some concept about it.

>> Ed Shikada: Exactly.

>> Mayor Reed: That could be helpful to the council. I have no written requests for additions. Are there any others?

>> Councilmember Constant: Start time is okay at 9:00?

>> Mayor Reed: 9:00 okay for start time? We still have a performance review as part of the --

>> City Attorney Doyle: No, there's no performance review but I think there might be -- there will be labor and that might take a little bit of time.

>> Mayor Reed: Let's just stick with a 9:00 start time. I have one request to speak on this, Mr. Wall.

>> Good afternoon. With reference to 2.8, amendments to the city pay plan for variation classifications. I would recommend that you extend that to everybody that works at the water pollution control plant, not just the plant operators. And you might also extend this to the office of City Attorney, and other sensitive areas. Once you start providing, well, because of this is an admonition that you shouldn't have cut their pay and benefits to begin with because all these operators are leaving in droves, okay? And our attorneys are leaving in droves too if they can and they're just as important. On 3.3, on this IBM operations efficiency diagnostic report, I suggest you just throw that report in the trash, Mr. Mayor. You're going to irritate every San José police officer and every firefighter and just about everybody who has a brain. IBM is just out for their own good in this matter and corporate entities shouldn't be able to use taxpayer machinery to further their own corporate product. Item 4.3, you don't need any more housing affordable or otherwise in this town because you don't have the services to maintain them thank you.

>> Mayor Reed: That concludes the public comment on this item. Is there a motion?

>> Councilmember Oliverio: Motion to approve.

>> Councilmember Constant: Second.

>> Mayor Reed: I don't think we had any sunshine waivers on any of this so -- on the motion all in favor? Opposed, none opposed, that's approved. Nothing to talk about on Redevelopment Agency or successor agency to the Redevelopment Agency.

>> City Attorney Doyle: Mr. Mayor, we're in the process of working on a successor amendment and we'll bring back to the Rules committee. But in the meantime do you want us to continue to keep this item on here? Ultimately the successor agency will be part of the city council agenda. It will be in the 9s.

>> Mayor Reed: I think we can just modify this and drop it off. Just so people don't get confused when they look at the agenda and think maybe there's something going on. And then we'll deal with it, as we're likely to have some successor agency meetings in the near future. But let's just modify this format, I think.

>> Excuse me, Mr. Mayor, actually, 9-1B is a perfect example of that and we will be changing the language to read, adopt a resolution, instead of the board, since there is no board, city council acting in its capacity as the successor agency.

>> Mayor Reed: Okay. I think that's it on agenda, since there was no meeting on the 21st, we only had one to look at. Successive agendas, nothing to look at. Update, usually bad news coming out of Sacramento. Public record, I think -- next thing to deal with. Have some requests to speak on public record. That O'Connell.

>> Martha O'Connell, president of home, speaking on behalf of home on the consolidation. There is a letter, from the park owner rep who endorses consolidation. When you get a park owner rep and a park resident saying the same thing I think it's worth looking at. Just want to report to you the latest from commission land. The human rights commission violated the Brown Act by voting for their chair by secret ballot. They couldn't have their meeting three months ago because they didn't have a quorum. They then released the serial meeting opposing consolidation which is on the agenda for tomorrow night. I'd also like to bring you up to speed on some of the statements made at the public hearings. A lot of these commissioners think they're focus groups, so be prepared to hear that they're the best-paid focus groups in the State of California. I suggest they need to look at their charge.

>> Mayor Reed: David Wall.

>> This will be referred to, item G, in reference to the pretreatment plant. Report, Mr. Mayor, that showed up at the T&E agenda, item number D-4. I want to continue to stress, that the pretreatment program is the only line of defense for the water pollution control plant. It has been grotesquely managed, and let's look at the nodes of

management, from the City Manager to the assistant City Manager to two deputy City Managers to the director of environmental services, assistant director of environmental services. Deputy director of environmental services all the way down to the program manager responsible for racking up these 85 violations. The plant receiving station, septic hauler program was not discussed publicly until now but it is part of the report. Septic haulers, Mr. Mayor, come in with their loads, drop off a couple of samples in 500 mill liter plastic vials. But whether or not those samples are analyzed, usually thrown away. What I'm saying now because of the fluctuations in toxicity at the plant, these septic haulers should have their own tank to drop their loads in instead of just dropping in eighth head works. Once it's in the plant, if a nefarious septic hauler were to dump a highly toxic load from some illegal operation, a drug lab or whatever, that could cause a toxic upset, and the plant effluent requiring then, of course, regulators to step in. So pretreatment people should know this by now, with the amount of septic haulers coming into the plant, that they should have their own receiving stations so they could analyze the stuff before it gets into the plant. And that goes once again to incompetent management.

>> Mayor Reed: Sorry, your time is up. That concludes your public testimony on the public record. Motion is to note and file.

>> Ed Shikada: Mr. Mayor, members of the committee.

>> Mayor Reed: Yes.

>> Ed Shikada: On C, there is a letter from Richard Vlatunich.

>> Mayor Reed: Vlatunich.

>> Ed Shikada: I'd like to refer that to ESD staff for some follow up to contact Mr. Vlatunich regarding the commercial solid waste collection franchise.

>> Mayor Reed: All right, included in the motion?

>> Councilmember Oliverio: Yes.

>> Mayor Reed: Yes, it is. All in favor, opposed, none opposed, that's approved. Next item would be city attorney's recommendation to support amendment to the fair political practice commission regulation.

>> City Attorney Doyle: Lisa Herrick addressed this issue. This is one that we've been asked to join, it has to do with stipends received by councilmembers, and any elected official who happens to be on a public board. And FPPC regulation which has gone by little notice but has gotten a lot of attention in Southern California and seeking to amend the regs.

>> Mayor Reed: So this is why yesterday when we made some committee appointments Councilmember Pyle abstained because we were appointing her to the VTA board.

>> City Attorney Doyle: Right. Typically government salary is exempt from any conflict of interest. But this falls under another subsection. I'll let Lisa explain it.

>> Mayor Reed: Always another subsection in this stuff.

>> Lisa Herrick: That's right. What Rick said is exactly right. What we passed out and wasn't originally attached to the memo are the actual revisions being proposed by the cities listed in the memo and there are copies for the public as well on the back table. I apologize that that wasn't included with your packet. The -- essentially it adds another subsection that would be an exception to the exception. And so that the new language is underlined in subsection C, that would be a new subsection. And then it would allow a public official to actually participate in making an appointment, where the only personal financial interest is in a government salary. And so that would be the result that is consistent with many other provisions and exceptions and advice letters from the FPPC that government salary is generally an exception to a personal financial interest.

>> Mayor Reed: Thank you. I agree we need to make this change. Taken to this extreme which is where it seems to be going, you probably couldn't even ask a councilmember if they would be interested in serving on the VTA board. We'd have to draw their names randomly to make the appointments.

>> City Attorney Doyle: That's correct. You can't participate in the making of the decision so that would be participation.

>> Mayor Reed: What if you used mind-reading? Would they be participating if it was involuntarily proceeding? Ask the FPPC what they think about that?

>> Lisa Herrick: We'll get a letter opinion on that.

>> Mayor Reed: Okay.

>> City Attorney Doyle: We're asking to have this on the February 28th meeting because it goes to the FPPC for a hearing.

>> Lisa Herrick: That's correct.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: If the FPPC doesn't change this do we need to correct what we're doing because some of us serve on boards that have small stipends.

>> City Attorney Doyle: I think we are dealing with this prospectively that's why you saw Councilmember Pyle abstain yesterday. Again, this is going by little notice only because it's becoming an issue in Southern California, at its surface, I think the FPPC would like to see the change as well, or at least have indicated they are receptive to the discussion and the stronger the support the better.

>> Councilmember Constant: I'll make a motion to support this and cross reference on the next council meeting.

>> Councilmember Oliverio: Second.

>> Mayor Reed: Motion to support and get this on February 28th. All in favor, opposed, none opposed, that's approved. Next item is a request to agendize council consideration of historic landmark nomination of fire station 1. We have a memorandum from councilmembers Liccardo, Oliverio and Rocha. I don't think there's a lot of controversy on this but we do need a date, perhaps, if we're going to agendize it or do we know how long it will take to get it ready, et cetera? Should we specify a date? How about tomorrow or next week? No, no meeting next week.

>> Laurel Prevetti: Good afternoon, Laurel Prevetti assistant director of Planning, Building, and Code Enforcement. This matter is ready for council consideration at the convenience of council. It has been heard by the historic landmarks commission consistent with the municipal code and there has been a formal transmittal to the city council. So from the administration's standpoint, our work is complete, and it's ready for calendaring again at your convenience.

>> Mayor Reed: So we would just need to get the documents out to the public on a sunshine rule, whatever that might be.

>> Laurel Prevetti: Yes.

>> Mayor Reed: Okay, other comments or questions on it? Mr. Wall you want to speak.

>> I would like to personally thank Councilmember Liccardo, Councilmember Oliverio, and Councilmember Rocha, for putting this forward. Fire station number 1 is the fire station in my neighborhood. I've come -- these folks are in my neighborhood all the time saving lives, doing what they're hired to do and very grateful. Would like

to add a little extra that you make sure when you pass this that you provide extra funding to repair their emblem that's on the side of the building there, it's been chipped a little bit. Thank you.

>> City Attorney Doyle: Mr. Mayor, I just want to address one issue that we'll be getting back to the council. The -- this property is now owned by the city as successor agency. And the way the state law reads is, the successor agency is supposed to try to get top dollar for the property, to the extent that there is -- I don't think that necessarily limits your land use or your designating property, as you wish, whether historic or otherwise. As zoning or other things. But I at least want to be able to say that we will be addressing that in some kind of memo.

>> Mayor Reed: Okay. Successor agency oversight committee, et cetera, does tend to make things a little more complicated just to get to the question. I had another question for Laurel Prevetti and that is the work that's been done, since the work was done a while back, council spent a little time looking at the process and the documentation used around the historic designations. We had the survey and the scoring sheet and this was all supposed to be changed. But I don't know if we've made those changes and if so what's coming to us, is it old or new or neither?

>> Laurel Prevetti: Thank you, Mr. Mayor. The question regarding the scoring sheet pertains more to issues of how we add items to the inventory of historic resources. And then the question was, how do we deal with items that are not quite at landmark status but still have some significance to the community. So that is a whole body of work that essentially was terminated when the council decided to defund historic preservation. So it's essentially in suspension. The issue of landmarks is all spelled out in our municipal code. The council did make modifications to streamline that process. So those are the rules that are in effect and would certainly be applicable for fire station number 1. Just want to note that the record is very clear that regardless of whether or not owner the resource becomes a landmark status for CEQA purposes if there's ever a proposal to demolish the structure it would require a full environmental impact report because of its potential significance as a qualifying city landmark. So whether or not the council chooses to landmark it, it still has that implication in terms of property disposal or other uses for the successor agency.

>> Mayor Reed: Okay, I just want to make sure that the work that the council might look at is current in terms of the way that we're trying to process these things so we don't look at it and say oh, now we got to go back and do the work.

>> Laurel Prevetti: No, the work for fire station number 1 is complete. The documentation regarding its significance is sound. We do have a formal transmittal that actually came to the council or was posted to the agenda of April 2009. So all of the work is done and consistent with our current municipal code.

>> Mayor Reed: Okay.

>> Ed Shikada: Mr. Mayor, if I might, so Laurel, given that, would you care to hazard a guess to a council date at which the material would be put forward?

>> Laurel Prevetti: It is really up to the sunshine rules. So probably the first meeting in March would, I assume, meet all the sunshine requirements.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: I would suggest, based on that calendar date, it's going to be a pretty busy one on March 6th. I would suggest March 13th. And then if there's any questions that have come up in this Rules Committee, then planning may have some opportunity to take a peek at it.

>> Mayor Reed: You want to make that a motion?

>> Councilmember Oliverio: That would be my motion to have this scheduled for March 13th.

>> Councilmember Constant: Second.

>> Mayor Reed: The motion is to agendaize it for March 13th. All in favor, opposed, none opposed, that's what we'll do. Item number 4 in this category is a memorandum from Councilmember Constant regarding the San José police foundation relationship to the police department. Councilmember Constant, do you want to speak on that?

>> Councilmember Constant: Thank you, Mayor. I put out this memo because it came to my attention that the police department had stopped accepting -- making grant requests and accepting grants from the police foundation. And when I spoke to the City Manager initially, she had been unaware of that status at that point. I think it's really important that when we are in a time of fiscal constraint, like we are, that we continue to work with organizations like the police foundation, to help fund those things that we can't fund 34 normal budget process. We've had a long standing rich with the police foundation that has worked well over the years. The police foundation has funded hundreds of thousands of dollars of equipment for the police department, the patrol units, several of them are listed, it's not an all inclusive list but several items are listed in the memorandum. In addition to that, the foundation has posted several public events fund raisers that have served to bridge and build great relationships between the police department members, the political leaders, and the public. And the work has been very, very beneficial for all parties involved. But because of this relationship, I think both the foundation and the city, the police department, suffer from that. So I think that we need to do a few things. One is to have the City Attorney do a legal analysis of the conflict of interest that have been referred to in the memorandum that's attached to my memorandum to develop a policy that can be uniformly applied to all grants and all foundations that the city works with. We know this is not our only foundation that we work with. And perhaps in the future we'll have more. But in the meantime we shouldn't stop the work of the foundation. My understanding there's over \$120,000 available to be granted right now and there's definitely needs within the police department. The city council does have the responsibility to accept large grants and make budget allocations and appropriations. And I think that until such time as staff can complete the amount of work that needs to be done, which is a fairly significant amount of work, it would be only reasonable to have the city council work as the approving body for any grant requests and grant descriptions.

>> Mayor Reed: Thank you. I had a question for the staff. Grants that people want to give us money, sometimes they're on the council agenda. Usually we're trying to get money out of people. But there are occasional people

come to us with work, money they want us to spend on antismoking program for example and some of those other things. The parks foundation grants, specifically thinking of grants, how we handle that this the course of any other examples we have.

>> City Attorney Doyle: And I think there is the one example that stands out in my mind, it might have been a few years ago, where we established some policy where developers, if they wanted to contribute towards maintaining a park. There were some rules set up so that they couldn't have an item before the council where there was some nexus between that park and their development and it was a two-year period. It was some kind of -- I don't have the exact rules but I know there were rules. And it's not uncommon. Typically it was, what do you call, whether it was pay to play, developers coming to you or regulated industry. In this case of Councilmember Constant's memo whether it's you know card rooms or tow companies or taxis, you know, there are people that might have an issue. And I know the chief was going to address that and maybe he wants to address that further. I think the City Manager in conversations we've had as a result of conversations with Councilmember Constant, wants to come up with guidelines. I don't know if it would be a policy but at least guidelines as to when to accept, under what conditions and where it looks like just to make sure there's an arm's length and not any appearance of a problem. So there have been cases. The parks is the one that stands out in my mind. But you're right I mean we take grants all the time and we do try to get -- we have tried to get more, particularly for parks.

>> Ed Shikada: More broadly, or perhaps most broadly, Mr. Mayor, in terms of your question, I believe there's actually a dollar threshold. I don't remember what it is, in terms of what we accept at a ministerial level versus what goes to council. In addition to any obligations that would be on the part of the city, that basically come along with the grant. And so in particular where there are obligations to the city we would come back to the council for that action.

>> City Attorney Doyle: Part of the problem is we're not used to getting a lot of money --

>> Mayor Reed: We're used to asking for grants.

>> City Attorney Doyle: It is a new thing, a welcome thing but that's why guidelines are necessary.

>> Mayor Reed: This foundation and the parks foundation, I don't know if there are any others that are really in the business of raising money for us as opposed to --

>> Dennis Hawkins: The library foundation.

>> Mayor Reed: The library foundation, okay.

>> Dennis Hawkins: Friends of the library.

>> Mayor Reed: Friends of the library. So we do have some that are in the business, really, of raising money for us, as opposed to the grants that we go and get, that's a different category. And then we have the events, I think we probably have one on our agenda, we have almost every week, of council sponsored events. But that's a whole different set of reasons and rules that we do that. So it's really police foundation, parks foundation, library foundation.

>> Ed Shikada: Happy hollow park and zoo.

>> Mayor Reed: Okay, all right. We are setting up these things because we need the money. And I don't know that we have any rules for any of them about that. I just can't think of any.

>> Ed Shikada: Correct. And we have --

>> Mayor Reed: Go get the money.

>> Ed Shikada: -- discussing where is that bright line. Particularly the involvement, as well as the flow of funds that are involved with the foundations.

>> Councilmember Constant: And I might add I think we really owe it to the organizations because the upheaval that has occurred in the police foundation over the last several months, I don't think that's fair to the organizations to be but in that predicament in this particular case where the chief and the board had a disagreement over how to handle things and there was a lot of strife in the organization. I don't think that's healthy for the organization nor is it healthy for the city. And the fact of the matter is given the future outlook for public finances in the state of California, we'll probably be relying more and more on these things as we move forward. We might even one day have a pavement foundation so we can pave our streets. You never know. But I just really think it's important that we develop these policies, guidelines, whatever you call them so that we can have efficient operations on both sides, at the city, with the citizens who are coming together to help us, where we don't feel that we're scolding or make people feel bad for the actions that they've been doing.

>> Mayor Reed: Chief, do you have any comments?

>> I have to say out front that I'm just incredibly grateful to the police foundation, both current members and past, for the good work that they are have done. And again, the dollar amounts as Councilmember Constant mentioned, we're talking in the hundreds of thousands of dollars. They typically come in smaller increments, but they're the type of things that the city just can't or would not be high on our priority to do, so we're incredibly grateful, in particular to our immediate past president, Rich de la Rosa, who has been clearly a leader in raising funds. For anybody -- I'm a much better bowler, just for the record, and I appreciate all the councilmembers and everybody that comes to basically what in effect is a community event. Having said that, you know, we had a disagreement with respect to a potential conflict of interest. There was a lot of discussion, and the board chose an action that asked, in effect, I felt it in the best interest of the department and quite frankly the city, to suspend the relations. That didn't mean terminate, that just means have further discussions. And what that has in fact happened now is we have a path forward. And I will say, and I'm very grateful to the board, they've come together. We're meeting the leadership of the board on Friday with the president Quigley to talk about, go ahead, rescinding that memo that I've already issued before and reopening that relationship. It's the path we need to be on, but I think greater than whatever happened with respect to that one incident is the highlighting of the issue of

conflict, potential conflict of interest, whether it is actual or appearance. And I think even within the bylaws of the foundation itself, it does talk about that membership on the board and appearances of conflict. Now, what raises the specter for other foundations within the city which I think is probably healthy for us anyway to go through. So Councilmember Constant, with respect to the memo, I appreciate that. But I think the immediate issue with the police foundation board, I won't say it is necessarily resolved, but it is -- I suspect that we will have resolution on Friday, day after tomorrow. Had a number of conversations with -- certainly with Pat Dando and certainly just now with Mr. Quigley. And I don't know if they're going to be speaking on this, but again my --

>> Mayor Reed: I have cards from Tim and Rich.

>> Yes, that very grateful for everything they've done for us. And what I think will happen in the future for the interest of the department and for the city itself.

>> Mayor Reed: Why don't we hear from Tim Quigley and Rich de la Rosa now.

>> Mr. Mayor, members of the committee. I think I've got this right. The mission of the San José police foundation is to support and enhance public safety in the San José community by collaborating with providing resources to and supporting the police foundation. To that end in addition to the comments that the chief just gave you, we are looking forward, we have a delegation of three of our board meeting with the chief and later with the chief and the City Manager to strengthen the communication and the further discussions on how best to work with the department going forward. Would I comment also that at our recent board retreat last week we reviewed our conflict of interest policy. We are refining it and will adhere to it. And then finally, the effectiveness and the efficiency of this foundation as I'm sure many other similar ones in working in parallel with our public organization is the trustworthiness of the relationship with the chief and the city management and city leadership. But I would like to underscore that the board membership of this foundation is comprised of some very hardworking ethical, experienced community leaders, and professionals, who are committed to providing financial resources to the city to plug in for those needs that city budget falls short in providing. We are neutral on this memorandum, as I view it as a really matter of internal city leadership process.

>> Mayor Reed: Rich de la Rosa.

>> Rich de la Rosa, former San José police foundation president, vice president, and a founding member. Mr. Mayor and councilmembers, I'm reading from this letter on behalf of myself and Victor Ajuloni, a former foundation member who is out of town today, or he'd be here to speak. We would like to support Councilmember Constant and support his action items in the memo dated February 10th regarding foundation grants. As the foundation reassesses its relationship and processes with the police department an important part of the discussion is the chief's involvement in our board and other structural issues. We believe his actions are a conflict and need to be addressed by the city. We would like to see actions taken that the chief or any other department head not be allowed to begin its own nonprofit for which an organization already exists, and is recognized by the city. An individual should not be allowed to minimize an organization, and its mission, on their own personal bias. The city should create a clear set of uniform standards that tie the ethical question out of community fund-raising. Having the City Manager's office or the budget office deal directly with financial requests will hopefully solve the future repeat of this foundation -- the foundation's unfortunate situation. In closing the San José police foundation has made up of generous community and business leaders whose purpose to assist those that serve and protect to make the City of San José a better place to live, work and play. Their focus must be on the men and women who wear the badge and the important projects such as the canine and horse mounted units and not perceive to conflict interests. Thank you.

>> Mayor Reed: Thank you, That concludes the public comments. I guess I would just ask, councilmember Constant, having heard this, it seems to me we don't need to take action today, maybe defer it a couple of weeks until these meetings and discussions have been had and the manager can figure out what we might want do before we give direction.

>> Councilmember Constant: Well, I don't think anything I've heard today tells me we don't have to have a uniform policy and --

>> Mayor Reed: No, I agree.

>> Councilmember Constant: And the legal analysis and all that. And quite frankly, I do think it's important because I think when we have someone from our organization exert influence on an independent board, I don't think that's right and that's what happened here. And I think we have to have those policies that say if we have independent boards, that are nonprofits, and the reason they're independent from the city is because the city doesn't want to have that relationship of being out there fund-raising then they need to be independent. And we need to have the guidelines that allow the actors on both sides to know what their roles and their responsibilities are. And I think that quite frankly the chief overstepped his bounds going to the nonprofit and saying, I want this person to resign. I know it created a lot of conflict and I think we have to have those things and I don't think putting those off does us any good maybe bullet --

>> Mayor Reed: I'm sorry, I didn't really explain myself. I'm looking at item 1, reestablish a relationship, sounds like they're in a reestablishment mode already. And item number 3, bring them all to the council, until whatever the policies in effect, I would say maybe those get postponed. But developing the policy and doing the legal analysis that's what I was -- I'm sorry.

>> City Attorney Doyle: And we're doing that already. Whether the Rules Committee refers it to us or not, with respect to developing the policy, I think moving beyond this, this has raised the issue when and where and how is it appropriate and what guidelines we should have. And I know the City Manager has put this front and center.

>> Councilmember Constant: So I would be willing to split the memo and say that the two items, first item 1 and the second -- first item 2 and the second item 1, I should have numbered these better, referring to the City Manager, the development of the uniform policy and whatever else it says, and the City Attorney, to handle the legal analysis that can be the basis for that. But I think we should direct that to go forward. And then get a report back to our committee here, say, in 30 days, on what has transpired between the police department and the police foundation to ensure that things are running. So that was a motion.

>> Councilmember Oliverio: Second.

>> Mayor Reed: Okay, we have a motion to do that. Anything pending that needs more speedy action on this in the waive of funds or decisions that can't wait for 30 days for a report back?

>> Dennis Hawkins: Can I just clarify so I can --

>> Mayor Reed: Yes.

>> Dennis Hawkins: So what is being proposed is moving forward on item 2, which was referred to the City Manager, and item 1 which is referred to the City Attorney.

>> Mayor Reed: Right.

>> Dennis Hawkins: And the other point 1 and point 3 --

>> Councilmember Constant: 30-day check in.

>> Dennis Hawkins: 30 day check in.

>> Mayor Reed: Bring it bass to this committee.

>> Dennis Hawkins: Thanks for the clarification.

>> Ed Shikada: Not to speak for the City Attorney but I think in those 30 days when we come back with a report on the specifics of the police foundation, we'll also give a report on overall some thoughts and suggestions with respect to uniform policy.

>> Mayor Reed: That's the motion. All in favor, opposed, none opposed, that's approved. Again thanks to both the chief and the police foundation for what gets done on behalf of the people of San José. Item next would be 5, nomination of a city-owned facility, Monterey highway, pedestrian overcrossing to be referred to the, somewhere, to a committee. We have a policy about where names go for -- considered before they get considered by the council. I'm not sure where this needs to go but that's the request by councilmember --

>> Councilmember Constant: I'll make a motion to approve and let staff figure out where the appropriate place to send it is.

>> Dennis Hawkins: Thank you, Mr. Mayor, Councilmember Constant. We received the nomination suggestion from Councilmember Kalra. Council does have a policy, policy 7-4, one of the complications is that one of the primary vehicles has been to refer these to commissions such as the parks commission, if it's in a park. We don't have a street or traffic commission. And this is the naming of a transportation facility. And so that's why the suggestion was made to send it to the Department of Transportation, and the transportation and environment committee. I've been advised that an alternate suggestion is to send it to the Community and Economic Development committee so appreciate the motion and allow us to sort through this and send it to the appropriate chain for the public hearing to be conducted and then come back to the council.

>> Councilmember Oliverio: What about the bicycle pedestrian commission since this is a pedestrian bridge?

>> Dennis Hawkins: We can add that to our list of universe of choices.

>> Councilmember Oliverio: Do we name every bridge?

>> Dennis Hawkins: It is a bicycle and pedestrian bridge, so actually that's a good suggestion but let us work out the details and we'll come up with a plan.

>> Councilmember Oliverio: Sorry, I just thought that makes sense that it's bicycle and pedestrian and we have a commission called bicycle pedestrian.

>> Dennis Hawkins: It's actually a committee, an advisory committee to the department. So that's might be where the department -- that's why this one's a little unusual.

>> Councilmember Oliverio: Sure.

>> Mayor Reed: I would support that as long as you don't go create another commission.

>> Dennis Hawkins: Not on my list to do.

>> Councilmember Constant: I was just going to say in the future is there any reason whether -- if there's not a clear line it just doesn't get handled at Rules Committee and we don't create a much of extra work?

>> Dennis Hawkins: That's why it's here.

>> Councilmember Constant: We could just handle it and I don't know that we need to send it anywhere, quite frankly, unless I'm missing something that we need to send it somewhere --

>> Councilmember Oliverio: We have a policy on naming.

>> Mayor Reed: There is a policy and part of the reason for the policy is not make it simple or easy to name things.

>> Councilmember Constant: I hate policies that achieve that goal.

>> Mayor Reed: This is one of the cases where slowing things down was really the intention of the policy. So is there a motion? I've forgotten.

>> Councilmember Constant: Yes, there was.

>> Mayor Reed: Motion to approve the recommendation.

>> Councilmember Oliverio: To include the bicycle pedestrian --

>> Dennis Hawkins: I'll include that.

>> Mayor Reed: All in favor, opposed, none opposed, that's done. Item number 6, approve the African American history month flag raising as a city council sponsored event.

>> Councilmember Oliverio: Motion to proven.

>> Councilmember Constant: Second.

>> Mayor Reed: All in favor, opposed, none opposed, that's approved. Last item is to add to the Public Safety, Finance and Strategic Support committee, an evaluation and council consideration of potential funding for San José Police Department patrol officers on-person cameras. We have a memorandum from councilmember Liccardo that we deferred from last meeting to today. Councilmember Liccardo, you want to speak to your memo?

>> Councilmember Liccardo: Thank you, Mayor. I would just ask that be added to the public safety, finance committee schedule, I guess or work plan rather for some point later in the year. I know that staff has some time to chew on this. I was just talking to Vijay Sammeta, and I understand there is significant I.T. implications here and a lot of details that need to be thought out before much could come back publicly. But I would just ask that it would be put on the work plan so that way we don't lose track.

>> Mayor Reed: Chief.

>> Certainly. First of all I thank Councilmember Liccardo for putting forward the memo. It follows on the heels of judge Cordell's also recommendations. She and I have had a number of conversations. We're at a point now where it's really clear, in jurisdictions where there are cameras, you avoid litigation costs, because when people make complaints, and we believe that 99.9% of the time our officers are doing the right thing, but you get a complaint, and it's he said, she said, there's nothing better than have a video to say, this is what happened. So you avoid litigation costs. Prosecutions are very easy. A lot of times there are plea deals cut because you show the defendant and defense counsel what happened, or at least what's on the video, it's a plea deal. There are issues of not only the cost of the device, they're getting smaller, they're getting better, they're getting cheaper. It's not that piece, it's the piece of what do you do afterwards? How do you store it? How do you get it over to the D.A.'s office for prosecution, how does the city attorney's office have access to it. Then the PRAA issues that are sure to come out of this, I'm going to want to see everybody's tape from everything they've done for the last 24 years, have they handled these types of stops the same way? We can see it all coming. But it's coming. I've said this before publicly, I think within the next ten years every police officer in this country will be required as a matter of policy if not law to wear these cameras. We're at the cutting edge of this. I just got word Mr. Mayor that the bill has now -- the payroll tax bill has passed, the D block is in it, along with billions of dollars. So we're going to have a methodology to get it up to the cloud. Vijay has been working diligently to get cloud storage not only for the City of San José but the federal government is doing encrypted secure storage. So we're on the frontier here of something that is really important that's going to save us a lot of money against false claims, also meritorious claims. If our officers do something wrong it is going to be very simple for Rick and his staff to go, you know what, you probably ought to take a look at this one pretty quickly. So I think it's good for everybody to do it. My concern as I was sharing with Councilmember Liccardo, we're a little premature. Our bandwidth -- pardon the pun, I'm thinking along the lines of putting and everything else from yesterday. There are some good ones councilmember by the way -- that we not get too far ahead of ourselves. It's on -- needs to be on the work plan. We are thinking about it. Everybody is on the same page, it's just making sure that we have thought it through, we have the money. The grant funding will not come through in such a way that we're going to have -- be able to outfit the

whole department. We should do it all at once. There are some labor issues, but I'm confident that we can get through those. Similar to GPS, when we first put GPS on the cars, people were very concerned about officers, you know, wondering, big brother, where they were. Well, all it took is, we had one officer tragically killed, and with not having the location there, and unfortunately it was a neighbor who saw or witnessed or heard that called in, and the officer was dispatched to his own call. So having the ability to have what happened captured, is really, really important and I appreciate the councilmember for his efforts.

>> Mayor Reed: Well, it's an interest thought to calculate how much storage -- Vijay can probably do it right now -- how much storage you would need for how many officers are on the street right now, chief, a few hundred?

>> Yes, if that --

>> Mayor Reed: Let's say they're only out there filming for four or six hours a day, 24/7, for 30 years, or 100 years of how long you might need to store this stuff for civil litigation purposes, my God, it's big. Storage business is going to continue to grow.

>> Councilmember Liccardo: Fortunately memory's cheap.

>> Mayor Reed: Well, it's getting cheaper. That's amazing amount of storage, though.

>> Vijay Sammeta: Thank you, mayor. Vijay Sammeta, acting director of information technology. You're exactly right, and that's kind of why, as the police chief mentioned, there are a lot of moving parts kind of marching down the path at the same time. Certainly we are looking at cloud storage, secured encrypted cloud storage. This very reason, when the council raises questions like this, we kind of need to do the analysis of it. We don't want the technology to be the barrier, I mean, today, as it stands it is. But in flight, we're looking at cloud storage as a way to kind of dynamically grow, shrink and grow based on the City's needs. So you're right. If you calculate how many officers we have, 24 hours a day, how many times they interact with the public, that that camera will go on and off, that's a phenomenal amount of storage. And no, I can't do that math in my head, by the way.

>> Mayor Reed: I can, but it won't be accurate.

>> Vijay Sammeta: I can certainly take a wild guess. But certainly this is exactly where cloud storage really benefits us, because we don't have to deal with the backups and all the normal issues. We just put it out to the cloud, securely, and then provide access to Rick, the D.A., whoever needs to, I'm not going to try and make up who the stakeholders are, but that was my wild guess for there, too.

>> Mayor Reed: Well, this is an area where the technology may outpace the law. Because public records act, POBAR, all these things that affect how we deal with records involving police officers, probably end up needing some state legislation just so we know we're doing it right. So --

>> City Attorney Doyle: Yeah, any time you get new technologies as we've struggled with on other cases, the law takes almost a decade to catch up.

>> Mayor Reed: It's always good to be on the leading edge.

>> Councilmember Oliverio: Mayor -- Vijay, what's a terabyte of storage in-house versus cloud, roughly, these days?

>> Vijay Sammeta: Let's see, if I could do some basic math in my head, I think most cloud providers are about seven bucks, eight bucks per terabyte, roughly.

>> Councilmember Oliverio: And in-house?

>> Vijay Sammeta: I'm sorry?

>> Councilmember Oliverio: I mean, I'm curious, if you buy a storage area network here, and you are managing X amount of data versus cloud, is it price parity or is it --

>> Vijay Sammeta: It is a little bit of apples and oranges because it depends on whether we have storage or not. Whether we need to add full pieces of hardware or not. With the cloud, we are buying just a linear subscription to something. If the chief is first person in line, well, he takes the hit and pays for all the infrastructure. Somebody else just needs to plug in a couple of drives, well, that price is cheaper. Actually, that's one of the reasons we're putting this out to bid. Is quite frankly, the calculation on storage, as users come to me and say, I need some, my answer is, it depends on when where you are in the pipeline. The infrastructure just doesn't grow as scalably and as linearly as it does in the cloud.

>> Mayor Reed: Well, one of the things I think we should think about as part of this work at the committee is how can we scope down the storage piece of this so that we get the benefit of it without having to have 30 years of storage. I don't know what the statute of limitations is on a claim, but that might be one starting place. We don't want to keep it forever. And if we don't set that up in the beginning, we might end up keeping it forever, our records documents storage, whatever the policy is. We need to think through it. Because it's a great idea, but if it gets so big we won't be able to do it. If we can scope it down some way, that would be helpful.

>> I know Carl Mitchell has done some research on storage of videotape and in what settings videotape, and absent, I think if I recall correctly, it's two years unless there's an exception. Two years is a long time. And it may be just the right amount or even not enough for certain types of cases. But what we're seeing other jurisdictions that are using this kind of technology, you know, it's like 30 days, 90 days. Now, whether they're within the law or not is a different story. So we'd like to be able to follow the law, and if the law needs changing, which I think it does, in light of everything that's going on that we work on that as a legislative initiative. But I think we do need to be at the front end of this. I do think there will be a cost savings, significant cost savings for the city, and even though our loss payout experience is not that high, gratefully and thank the city attorney's office for that, as well as the city staff, but we could always drive it down even further. In addition to helping us document, when we get

people complaining the way we do service -- and we do get those complaints -- it's nice to be able to put it through, this is what happened, and people can draw whatever conclusions they draw from it.

>> Councilmember Constant: And there is also not just the civil, there's also a huge tool in the criminal cases, as well, and that has completely different storage requirements. Because homicides have a longer storage of evidence than other crimes. Sam would know more about that than me.

>> Councilmember Liccardo: Yeah, I do still have memories. You know, I want to offer --

>> Councilmember Constant: Memory's cheap but not always accurate.

>> Councilmember Liccardo: I want to offer two other I think rationales here I think one as Pete mentioned, the criminal context, this is something that could resolve criminal cases, much quicker as well, which keeps officers on the street and out of the courtroom, which I think we would all prefer. As you hand a tape over to a defense attorney, cases get resolved incredibly quickly. When you resort to he said she said, we know we're going to trial. The cost of storage it may be for investigative value we may determine at some point there's real value in keeping this stored. Because an officer contact with a gang suspect four years ago may be the only photographic evidence we have of who that person is if we're trying to find them again. I think there could be a lot of value well beyond the civil litigation context.

>> And just so you know, I did spend an hour this morning with Jeff Rosen and David Angel from the crime lab and David Howe and representatives from some of the companies that have the cameras to say what were some of the issues that they would anticipate in the prosecution realm. And we got around the idea of perhaps maybe we should do this as a county initiative as opposed to just the City of San José. Because right now we do have departments within the county that are using cameras, but they are different companies using different technologies with different platforms and different storage. And the idea is if we can get all the county chiefs to agree, we have one D.A., one prosecutor, and then have us be the lead for the rest of the state, I think that would be a good idea. And I think we're going to meet, the county chiefs meet the first week in April to bring this

up. We're getting to that point. We're almost there, where if we did it together, it would be a heck of a lot cheaper, so the City of San José doesn't necessarily have to front the entire cost to set up.

>> Councilmember Constant: So as the chair of the Public Safety committee, I'll gladly make the motion to add this to our work plan and just let us know when you think is the appropriate month to get it on and we will do so.

>> Councilmember Oliverio: That would be a second. And Councilmember Constant, does this, even though SVREAA is more dealing with the CAD to CAD and other types of systems, do you think this is a subtopic to bring up there?

>> Councilmember Constant: Well, I think it's definitely -- there's going to be bandwidth issues perhaps as they do it over this system. But that's going to be something that unfolds as we move forward. I think the chief will be able to split that up.

>> The bandwidth issues certainly would fall within that realm. But I think the actual policies about who, what, where, when, and access, that's probably something we'd set up with the District Attorney's office and the chiefs and the lawyers to make sure we did it right.

>> Councilmember Constant: The important thing is D block is getting loosened up, and we're going to have the bandwidth to do these second bands.

>> Mayor Reed: Oh, I think we'll figure out ways to use up that D block bandwidth and we're going to be worried about it in a short period of time. It seems like bandwidth just invites applications which is a good thing I think.

>> Councilmember Constant: And we'll have an E block.

>> Mayor Reed: We'll have an E block. Mr. Wall, you want to speak on this one?

>> Want to take the time to thank his honor, and Councilmember Liccardo, for his forward-thinking in this regard.

Thank you, sir. His memo did raise an important issue, subissue, and I want to quote from it. "A great many of those suits are resolved with payments of nuisance value. That is, despite the lack of evidentiary substantiation of the claim, municipalities will pay an amount necessary merely to rid itself of the litigation. Period close quote. Whereas this is true, I think going forward, a modern day attack plan for the attorney's office should be one, countersuits, for those classes or those cases that go to court, and flat-out denial of nuisance suits. Make them go to trial. Make them pay the cost of their own private attorneys. And then, countersue those people. There's no -- I'm tired of seeing these people that get drunk or on drugs and end up going to jail, turn around say, I got a black eye in the process, get \$70,000, I want that stopped. And I think the cameras will bring a lot of that to an end. But in the meantime, I think a new plan of attack from the attorneys should also be concurrent. Thank you.

>> Mayor Reed: That concludes the public testimony on this item. We have a motion to amend the work plan. All in favor, opposed, none opposed, that's approved. Last item, is the open forum. That O'Connell.

>> Congratulations to the mayor on a wonderful article over the weekend, the column calling you an honest man. I thought that was really great. The police union apparently is so upset by your use of the \$650 million figure as a worst case scenario, I was just wondering if they were also going to be upset about the poster seeing city employees eating out of garbage cans if pension and salary reform was passed. As a former union person for 23 years I found those posters hilarious and thank you to Councilmember Constant for autographing one for me.

>> Mayor Reed: Mr. Wall.

>> With reference to that \$650 million snafu, I was there that last year at that meeting and I recall that it was just an estimate and that it could go higher. The problem was is that communication staff didn't include the word "estimate" when they put it in writing. So that was an unnecessary problem. Also, it's not very prudent for people to put damage control into e-mails. Regardless of their opinion. Because that will come forward. With reference to increasing the number of firefighters on fire trucks, I want to put something I've observed several times. With only

four firefighters depending on their ranks when they come onto a scene they vacate the vehicle and the vehicle is standing all by itself. Now fire trucks are very highly expensive capital investments. They're also very significant insofar as they're sophisticated in how to use them. So at least in some neighborhoods you should have a minimum of five firefighters because the fire engineer should never leave the fire truck. Because of all those various valves and whatnot to keep that truck in operational status should they have to be called to a fire to be ready at the scene. In other neighborhoods, six firefighters are going to be needed. Because you're going to need a weapons officer. [Laughter]

>> You folks laugh. I mean it is true. But you cannot allow fire trucks to be standing by themselves.

>> Councilmember Oliverio: Find a Dalmatian.

>> Mayor Reed: That concludes the public testimony on open forum. We're adjourned.