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City of San José Rules and Open Government Committee meeting Rules and Open Government Committee meeting.

>> Mayor Reed: The meeting to order. This is Rules and Open Government Committee meeting for August 19th. Any changes to our agenda order that we have here, none, okay. The first item is to review the August 25th council agenda. Any changes on page 1? Pages 2 or 3? Page 4 or 5? Page 6 or 7?

>> City Attorney Doyle: Mr. Mayor, on item number 4.5, the temporary moratorium on bail bonds, this one's coming back. This would be the request to have an ordinance for two years. That item was noticed for the evening of the 25th. And we're not having a meeting on the evening so we're going to have to re-notice. I'd ask we kick it one week to September 1st.

>> Mayor Reed: We can't just renotice it for the afternoon?

>> City Attorney Doyle: I don't know if we have enough time. I mean, I can leave it with Rules that we can -- we'll try to make that change, but Tuesday, otherwise it will be the 1st. What that will mean is, between the operation of the 45-day ordinance which we've got the last time and this ordinance, there would be a gap of about a week where there wouldn't be a moratorium in place. But we'll do the best we can. I just found out about this five minutes ago.

>> Mayor Reed: All right. So we could set it open either those calendars, depending upon how you get the noticing down and leave it open?

>> City Attorney Doyle: Right, if we can notice it for the afternoon of the 25th then fine. Otherwise, it would have to get kicked to the 1st. I just need to know what time period is required, if it's a ten day period or if it's 72 hours.

>> Mayor Reed: Okay. Anything else on 6 or 7? Councilmember Nguyen.

>> Councilmember Nguyen: Yesterday at the council meeting, we deferred the mobile home advisory commission appointment.

>> That will appear on the amended agenda that comes out on Friday.

>> We suggest that we number that as a 3.X item, in anticipation of some council discussion.

>> Mayor Reed: Okay. I have another request for an addition, adding lower Silver Creek trail Reach 7 project contract. Any other changes or additions? Madam vice mayor.

>> Councilmember Chirco: It says that Councilmember Chirco, it's Councilmember Campos.

>> Mayor Reed: You used to be the chair.

>> Councilmember Chirco: Yes.

>> Actually, I think there are a couple of mistakes. I also saw councilmember Williams on T & E.

>> We'll fix those.

>> Mayor Reed: Back to the temporary moratorium ordinance. We just leave that on here, subject to noticing. And if we can't get it noticed on time, then on the amended agenda, we'll show it as being continued to the 1st, so that people when they get the amended agenda they'll know the answer by then.

>> City Attorney Doyle: One other thing Mr. Mayor and we're going to try to do a better job, and the clerk's office, under state law, the moratorium requires 4/5 vote of the council. So we want to make sure the council is aware of that.

>> Mayor Reed: And the public, of course. All right so people will get the answer when we get the amended agenda, we'll know. Anything else often the agenda? Is there a motion?

>> Move to approve.

>> There's an addition.

>> Mayor Reed: I got that one. Okay so the motion is to approve with the addition of the Lower Silver Creek trail and the other changes we talked about. All in favor, opposed, none opposed, that's approved. And the 1st agenda, anything on page 1? Page 2 or 3? Page 4 or 5? I have a question on 4.2, the procedure for initiating a city landmark. That's been deferred, moved several times. Are we getting closer to the date on that or is this just floating out in front of us?

>> What I heard from staff is that more outreach needed to be done. But I can follow up with them. That's what I heard this morning. That's what I heard today.

>> Mayor Reed: Okay. Anything else on 4 or 5? 6 or 7?

>> City Attorney Doyle: Mr. Mayor, item 4.3, that is a request that we commence eminent domain. That requires a two-thirds vote.

>> Mayor Reed: That's -- that Ryland Muse item, 2/3 vote, is that just because it was eminent domain?

>> Mr. Mayor, that will be noted on the agenda.

>> Mayor Reed: Okay. I have a question on 7.1. The ordinance on indoor use of recycled water. It's been to the committee, it looks like. I wonder how much outreach has been done in committee

hearing. This strikes me as one that people might get wound up about. I haven't read the staff report, so I don't know what has been proposed, but if the development community hasn't been in conversation we might want to do that before it gets to council.

>> Consult with staff on that. (inaudible)

>> Mayor Reed: Okay, anything else on 6 and 7? 8 or 9 or 10? Or 11? Anything else? I had one additional request, chief deputy City Manager travel to Montreal, Canada. Any other additions? (inaudible).

>> Second.

>> Mayor Reed: Motion is to approve.

>> Mr. Mayor --

>> Sorry, mayor. On page 6, the Los Lagos golf course, we need a sunshine waiver that should have gone out yesterday, in the early distribution packet, should hopefully go out this afternoon.

>> Mayor Reed: That's the response to the grand jury?

>> Grand jury report.

>> Mayor Reed: Would the maker of the motion accept the amendment? Anything else? All in favor, opposed, nobody's opposed. Redevelopment agency agenda for August 25th. Anything on page 1? Page 2 or 3?

>> Mr. Mayor, members of the committee. If I may, Item 7.1, the acquisition of property at 98 South Almaden, there will be a supplemental memo issued I anticipate Friday this week. It will clarify some of the issues, and the CEQA issues, we do expect that to be out on Friday.

>> Mayor Reed: Any other changes on the redevelopment agency agenda?

>> No other changes or additions.

>> Mayor Reed: All in favor, opposed, that's approved. September 1st, redevelopment agenda.

>> Mr. Mayor, at this time the agency has no items set on the agenda and if that stays the same, next week we would recommend cancellation.

>> Mayor Reed: All right. No upcoming study sessions, no legislative update. No meeting schedules. Public record, anything? Motion is to note and file public record. All in favor, opposed, that's approved. Appointments to boards, committees we have none. We have some items to review. Make recommendations, first ask request to approve and forward to the city council the appointment process for employee reps to the retirement boards and civil service commission. Each one. Any additional staff report on that?

>> No, Mr. Mayor, members of the committee, this is a routine item. The terms for both the police representative to the police and fire retirement board and then employee representative to the federated retirement board, expire November 30th, as well as the employee representative to the civil service commission. So there are three seats, related to employee elections that we'd need to handle this fall. The one item to point out is that the federated retirement board seat is currently vacant, due to a resignation. And our recommendation is, rather than fill it through an appointment process, which basically would take until October to fill the seat, resulting in that newly appointed member being on board for just one meeting of the retirement board, just to consolidate the process and just go forward with the vacancy on the federated retirement board for the short duration and have the normal election procedure.

>> Mayor Reed: Okay. I had a question about the language in the recommendation. When I first read it, I thought we were trying to fill it between now and November 30th.

>> No. I'm sorry for the confusion.

>> Mayor Reed: Okay. Just so that --

>> We would be keeping it vacant until the normal appointment process.

>> Mayor Reed: I'm looking at all of these. Just see the language says, filling it for a term which expires November 30th, 2009. We would actually be filling it for a term starting December 1st, two thousand --

>> December 1st through November 30th, 2013.

>> Mayor Reed: 2013, all right.

>> When we bring that in to the council we're also asking for a one week turn around on this item so we can meet the time line as stated in the code.

>> Mayor Reed: Okay, Nancy.

>> Councilmember Pyle: If I read it properly, there is would be no -- there is no (inaudible).

>> Correct.

>> Mayor Reed: So when we turn arounds would be August 25th, council agenda. Anybody here want to speak on this item? Nope.

>> Councilmember Chirco: Move to approve with the one-week turn around.

>> Mayor Reed: Motion is to approve, get it on the agenda for next week. All in favor, opposed, none opposed, that's approved. Next one is a recommendation to committee to -- from Councilmember Herrera and Campos to direct the City Manager to work with veterans organizations about a Viet Nam war memorial. And anybody here want to speak on that? I had a couple of questions that I had been -- the memo references a San José Vietnam war memorial foundation. I've gotten some correspondence from them. And one of the issues I think that needs get resolved is, who has been involved in the conversation? Since I'm aware of at least a dozen veterans groups who might have an interest in this, I think they need to be involved in a conversation before we get rolling on this. Because there's the potential that we don't talk to people first, they might get upset and then it just becomes a fight, instead of something that everybody can agree to. And I don't have any indication that any of the other veterans' groups have been contacted by this group. And I know that some of them will react if we pick a group. They will react just because they didn't get picked or they weren't consulted. And get it off on a bad start. And so I'd like to figure out some way to at least show this idea to people and see if the veterans' groups think it's worth pursuing. These groups have a design that they want to do. It's in the art category of some people might like it, some people might not. I'm just concerned about a process that we don't get started by getting people upset in the beginning, how we could that. If staff has any comments on that. (inaudible)

>> Councilmember Nguyen: Yes, I wanted to -- I agree with Mayor Reed. In the past I have had conversations with another group that wants to erect a Vietnam war memorial. So I think that the more outreach that we do to different groups, the better. However, my other concern which I think is more on a policy level is that -- and Barbara Goldstein can speak to this in a little bit. But my understanding is that we don't have an official policy on how to create a memorial, war memorial here in the City of San José. So my suggestion is before we even start going out there talking with different groups, we need to have a policy in place so we can have clear guidelines about how to proceed. Apparently we don't want to get into, you know, dialogues and conversations when we don't really have clear guidelines. So I think that's a better way for staff to start working on implementing a clear policy or an official policy.

>> Mayor Reed: There's also a reference in a memo to the new public art master plan. I don't know how that relates to memorials or what this might do. And it's something we need to sort out, I think. Barbara.

>> City Manager Figone: While is Barbara coming up let me shed some light (inaudible) from my past he is one of the champions of the memorial but we were really clear with him as he was seeking our guidance on where to begin, talking with council offices and others who might be interested. So I think he would be very open to the council's feedback and direction about getting other groups involved, and we'd be happy to do that. We were also very clear with him, that staff would need to do its due diligence and at that time, I didn't know that a policy was under development. So I think Barbara can speak to where we're at with the policy, and, you know, we could then also follow up if you'd like with this group and express their -- to them, council's interest in additional outreach.

>> Barbara Goldstein, public art director, office of cultural affairs. We've been working with other city departments for development of a monuments policy for approximately two years now. We've been to the Community and Economic Development Committee twice to discuss it. We've been working with general services, PRNS, the CAO and now as well the redevelopment agency and the Department of Transportation. Our goal is to go to the development cabinet on the 3rd of September, with the recommendations that have been developed, and then to bring it forward to city council.

>> Mayor Reed: Okay. Anything else from the staff?

>> Ed Shikada: I think certainly, Mr. Mayor, members of the committee, one of the other considerations that would come into play, an like would be the cost up front and the ongoing maintenance. So we'll certainly talk to the sponsors of that as an ongoing issue

>> Mayor Reed: Okay, so why don't we wait until we've heard what happens with this monuments policy before we get moving ahead so we don't lead people down the wrong path if the council wants to set the policy. It's very close, it looks like, to getting that in front of the council. Why don't we do that. (inaudible)

>> Councilmember Nguyen: Sounds good to me. I'll make a motion to -- can't say we shelve this, but put it on hold until we have a policy put in place and then we can move forward with the memo.

>> Mayor Reed: Okay, the motion is basically to defer this until we have the policy before us, council get some action on this and we can take that up and seize what to do then. Anybody want to speak on it? All

in favor, owned, none opposed, that's approved. We have nothing to add to council committee agendas. And then we have under open government initiatives, we have more work from the Sunshine Reform Task Force.

>> Tom Manheim: Thank you, Mr. Mayor. Let me just start by refreshing our memory on terms of what we have before us today. We have essentially three items before us. The law enforcement information section of the Sunshine Reform Task Force recommendations, and then statistical reports for both the -- prepared by both the police department and the fire department. That is who separate recommendations. If I can refresh your memory, when we were last before you, you directed -- well, this has come actually to the committee several times. But the most recent time you directed that we go back and work with both the District Attorney's office as well as Bert Robinson representing the task force, to see if we could reach agreement on language that would clarify what information should be released to meet the factual circumstances of the California public records act. In our previous discussions, the -- as we had heard from various people concerned about this, it was clear that one of the issues that kept coming up was confusion over what information should be reached. And so you sent us off to see if we could reach agreement on that language. We did meet -- we met several times with both the District Attorney's representative Joann McCracken and Bert Robinson together, and then there were a series of phone calls and language going back and forth. And interestingly, we reached agreement very quickly on the information that should be released, and the definition, and that is what you have on the screen and in the staff report. What was more challenging as we got into the discussions was not so much what ought to be on this list, but what language ought to be included along with this list, to make sure that people understood what this was, what it wasn't, how it could be used, how it shouldn't be used, sort of what I generally call the -- all of the disclaimers and footnotes to the language. And it was really quite -- both sides felt a great deal of concern for how this would be used. As we worked through that, what eventually became clear is both the District Attorney and Mr. Robinson shared the same concerns, one was that the police department would use this list and depending upon your point of view, either ignore other obligations to withhold information, or ignore other obligations to disclose information. Because this is not meant to represent everything that would be released in response to a request for information. It's really just to meet the test in the CPRA of what are the factual circumstances regarding this incident. The other concern was that others would misconstrue this list as either, you know, being -- just misconstrue how it would be used, I guess is the way I would describe it. So when we recognized that both the District Attorney's office and Mr. Robinson shared sort of similar views, although coming at it from a different perspective, we pulled back and wondered if we couldn't simply add language that would make clear that this language is still subject to all the other obligations and limitations that are contained both in the California public records act and other state and federal law. And we did that, and that is language that is in front of you today. I should make clear that the District Attorney's office continues to raise a concern, and that is, they would like to have additional language in here that says, "information shall not be released if the release will constitute an unwarranted invasion of privacy." In our own review of this, with our own attorneys, in discussion with the police chief, we are confident that we have the mechanisms in place that we need, through these other -- other section of the California public records act or state or federal law, that we can properly withhold any information that we would need to withhold. And I would just add, with your action yesterday, sustaining the balancing test, we have that mechanism, as well, to bring to the table if we have some concerns. Your direction also included that we then take this back out to stakeholders. We got a list of stakeholders from attorney James Chadwick, as well as from the D.A.'s office, a number of victims assistance organizations from the D.A.'s office, a number of organizations that are concerned about police practices from James Chadwick. We sent this language out to 34 different organizations. We had ten responses, actually one response was coming from two different organizations. And it was -- what I would characterize as a split decision. The ACLU, the NAACP, and two newspaper organizations felt that this language should not be approved and rather you should go with the Sunshine Reform Task Force recommendations. The Santa Clara Police Chiefs Association and the California Peace Officers Association just felt like the guidelines were unnecessary and the public records act as it stands is appropriate. The California police chiefs' association thought the guidelines were fine, and the YWCA rape crisis, Silicon Valley face Santa Clara County commission on status of women, all expressed the concern about protecting, they were fine account language but wanted to be sure that we would protect the identity of any victims. And then the attorney general's office also responded, they did not have any comment on they felt like it was left to the local jurisdiction to make a decision on this. So with that, I -- that is all I have for you on the law enforcement information. If you'd like, we could pause

there, or I could continue on through the other two sections, and -- did you want to pause, and deal with this one, or should I go through the other two recommendations very briefly?

>> Mayor Reed: Why don't you go through the others, as well. That way when the public wants to comment they can talk to whatever pieces they would like to speak to.

>> Tom Manheim: I will do that, I'll just comment that I'll be wearing two hats today. When we get to the comments section, I'll be wearing Bert Robinson's hat. He spent a lovely afternoon with you yesterday, but could not take another afternoon off today, and so he sent some comments which he asked me to read to the committee. Moving on to the other two sections which are statistical reports -- statistical reports prepared by the police department, the recommendation is, and I know that Dr. Phil Gough from the Consortium for Police Leadership in Equity is here and can speak to this, but the recommendation from staff is that we discontinue -- we continue collecting the data. Continue having it available to analyze. But that we discontinue publishing the reports that we have previously published, and instead, wait for the recommendation from the CPLA regarding really, what kinds of statistical reporting would be meaningful, and useful, both to the city, to understand more about our police practices, but also, to the community. And I think he can talk a little bit about when he could make that recommendation. So that is the recommendation on police statistical reporting. On law enforcement statistical reporting, you may recall we did come to you -- excuse me, I'm sorry, Nick -- we did come to you in July, and advised you that the fire department would not be in a position to actually start providing those reports or even give us feedback on away it took to provide the reports, using their new records management system, until December at the earliest. And so our recommendation is that for the duration, that the fire department report back, not to this committee, but rather, that we direct them, that we take to the council that they be directed to report going forward to the Public Safety, Finance, and Strategic Support Committee. Along with, I might add, the recommendation on police records. So that seem to be the appropriate place to really roll up your sleeves and get into this issue a little more deeply. With that I'll stop with the staff presentation. When you're ready, I'll be happy to relay Bert Robinson's comments as well.

>> Mayor Reed: I think I'd like to give Dr. Gough a chance to say anything he wants to say about what you've said about CPLA or anything else regarding the statistical reports. If he has anything to add at this time. You're welcome to stand up, sit down, whichever you wish.

>> Hope you don't mind if I sit.

>> Mayor Reed: Please.

>> All right. So I've been -- I have had privilege of taking a number of meetings this morning and feel that I have a sense of what's going on with the records report as I'm going to present at the Public Safety committee meeting tomorrow. We are I believe within a week or two of finalizing the memorandum of understanding, between the City of San José and the consortium for police leadership and equity. I did have the pleasure of meeting with George Rios and Carl Mitchell moments ago, and so I think we are of one mind about that, and there are no substantial obstacles that we see at this point to making that happen. At the point where the memorandum of understanding has been signed, there will be near immediate recommendations for how to proceed with data collection and data reporting, with regards to inequality. Again I'll stress what I said, the last time I was out here I had the pleasure of your company in April. There is a difference between inequality and bias. Inequality is just that things are unequal. We don't have equal pay, but we're pretty okay with that, a parent has more liberties than a child, for instance. We however find it objectionable when women are paid less for the same work that men do, right? That's an objectionable inequality. When we're talking about these police reports and these arrest rates, these are objectionable inequalities. But we don't know where the bias comes from. It's not okay, we're not as a society we've come to an agreement that we're not really okay with racial differences in who's being stopped and who's being arrested for the same sets of crimes. But we don't know where that's coming from. And whether it's the discretionary biases are police officers or larger societal problem that accrues to an individual before they show up at that police contact. And that's what our immediate recommendations would be, would be designed to stress data collection, usually things that police departments are already doing and data reporting, that respond exactly to that issue of not just the inequalities which are found in any of the statistics that you'll see but to the issue of actual bias. There's also longer-range goals that we've got in research projects which I'll be happy to brief you on today if there's questions but tomorrow in my more formal presentation. But that essentially is my understanding of the situation right now. If people are wanting data, I would, as I said last time, as a professional nerd, never be against more data being available, but I am against the biased presentation of data. And if

presentation of data is narrowly constrained, to what are so-called discretionary stops from officers, without looking at a broader picture, that disturbs me. Because the discretionary stop information that's available publicly through the universal crime report data which the data is collected every year by the FBI, it's made available publicly, it says that the discrepancies and the inequalities you're seeing here in San José in things like public intoxication arrests, all right, where you have a disproportionate number of Latinos being stopped for that, looks about the same if you're looking at forcible rape and murder. And we wouldn't say that it's the fault of police or prejudice on the part of police, that there's the same disparity, inequality, when it comes to arrests for forceable rape and murder that there are for public intoxication. That is the goal of the CPLE is to, short-term, come up with a reporting structure that will answer that, and longer-term come up with a reporting and data collection structure that will shed some more light on that so we can have a broader conversation about the nature of equality both here in San José and more national level. I don't want to take too much of the time of the committee but I'm here obviously to answer questions.

>> Mayor Reed: Okay, why don't we see if the committee has any questions for staff or Dr. Gough before we take public comments on this. Councilmember Nguyen.

>> Councilmember Nguyen: Just one quick question, because I'm going to hear your report tomorrow. So in the memo, on page 5, staff is recommending that San Jose Police Department continues to collect data regarding vehicle stops and use of force but stop its publication, until you concluded your studies. I wondered if you plan to talk a little bit about this tomorrow and if you agree with that assessment.

>> Again, the MOU is not in place. So we -- it's difficult for me to be talking about recommendations because there are certain things that I haven't been able to see. My understanding from both the conversation here and from conversations I've had throughout the day, is that the reason for the desire to stop publishing those reports is that they don't give the full picture, and that if you don't give the full picture essentially there comes a point where you are shouting fire statistically speaking in a crowded theatre. You're going to decorate inequality that will on its face seem to people as if you're admitting to bias and that will fan the flames of real miscommunication between police departments and the community. And so my understanding is that the desire is to stop on the publication of those reports at this time is to get a better reporting structure in place. Not to be a bar against transparency but to be sort of an improvement with regards to communication. But again you've asked me to speculate I think so I've speculated. My suggestion would be to direct that to the police department. In terms of my recommendations at this point without the MOU in place I couldn't issue a formal recommendation but that is in line with things as social scientists we understand. It would not be scientifically rigorous to allow an individual to come up with a subset of these data and publish it. We wouldn't allow that to come out in a journal.

>> Councilmember Nguyen: Chief Davis, publication was allowed before. Why are we stopping it now?

>> Rob Davis: I think you said, on the main reasons why, remember, these reports are reports that were voluntarily created by the police department. It's not as if we even had groups coming to us saying we want this data. We internally, going back 10 years ago, said let's take a look at our stop data, and as recently as five years ago, said let's look at the use of force data. We voluntarily came forward with these things because we felt like there were things we needed to learn. One of the things we've learned is we have learned what we can from the way we've been doing these reports. Saying we're not going to do these reports until we get informed more by the CPLE is not an attempt to say we don't want to do these reports anymore. As I stated, we wanted to do them because it was our initiative to do them, but it takes an immense amount of staff time to produce these reports. And if we're working with CPLE and they're on the cusp of coming to us and saying, here's a better way of looking at that, maybe you can take a look at data a different way, report on data a different way so it makes a greater context to the discussion than we see value in doing that. We're clearly interested in taking a look at this data ourselves. We would generate the reports whether we're being asked for them or not so it's not some reason or excuse not to continue to do them. That's why we're continuing to collect the data. We want to do it in a more intelligent form going forwards because it takes so much time to do them.

>> Councilmember Nguyen: Thank you. That's it.

>> Mayor Reed: The recommendation in the discontinue, I don't like the word "discontinue." I think we're deferring that. I don't think we're making the decision not to continue. Just a little picky point. Vice Mayor Chirco.

>> Councilmember Chirco: I want to add reply voice to that. When I read that it stood out. As a matter of fact, it didn't just stand out, it screamed. I don't know when the MOU is supposed to be signed. There's a lot of attention to this. To discontinue this, does it leave the impression that there's a concealment going on, that we're not revealing data, I realize there are resource intensive personnel but we've been doing it, as you said, for 10 years, and now we discontinue it and bring on CPLE, what kind of a message does that put out in the community to John and Jane Q Citizen?

>> Rob Davis: Well, to your point, we could do the report and spend a lot of time doing it. And what we're going to learn is nothing more than what we've learned from the last series of them we've done. In other words, if you take any of those reports and put them back to back and look at them over time, what we're currently doing is really not informing us anything additional. We want to get to the issues. We want to take a look to see how this information can inform us and direct either policies, procedures, training, whatever the case may be but we've also lost people internally. We have a reduced staff. We are already running behind on any number of things we're required to do so we're simply trying to use the resources we have in the best fashion we can to direct them to do the type of work that we need, that we're required to do, yet at the same time working in an intelligent manner, going forward with whatever reporting system we come out with, that will give us something of value. So this is not discontinuing reporting. It may be discontinuing the format, but we're clearly interested in continuing to collect the data, analyze the data and have it inform us. More information will be coming out and it's not that we're averse to doing that. We are just trying to use our resources appropriately to be able to address the issues we are required to do as we try and inform ourselves on these issues of bias based policing.

>> Councilmember Chirco: Totally sympathetic and totally unconvinced. I think when we transition to the XL model, I think there can be an explanation in their findings as to why these reports did not generate the data that was relevant. And that their recommendations are now this, this, and this. I'm not comfortable with discontinuing them, as there have been so much attention, so much focus, and my concern is that it will only create alarm in our community. So thank you very much.

>> Rob Davis: Sure.

>> Mayor Reed: Okay. Is there some -- Councilmember Pyle.

>> Councilmember Pyle: I want to stress this over and over again, doctor, that we need to get the whole body of evidence, the whole body of intelligence, if you will, before we begin to make assessments. So I just wanted to ask your opinion of how much more needs to be continued in reference to the issue that my colleague has brought up, so if you could comment on that.

>> Well, I mean again, it's a -- obviously, I'm a social scientist that does research on a politically charged issue. But to the best of our ability we are consultants in addition to independent researchers. We try to stay away from making political determinations of any kind. My understanding is that the councilwoman has raised a political issue with regard to community trust. And community trust is a different issue than the issue of learning about bias in policing, right? So I can't tell you about -- I mean we can talk about what builds community trust and in the law and procedural justice. My colleagues Jan Ho and Tom Tyler have a great deal of research on that, but it's a completely separate issue. To the issue that Chief Davis addressed, is the police department going to learn anymore as a result of publishing the statistics? No. Is the community going to learn more than they've learned from publishing prior reports? Probably not. The prior report from last year, my guess is, it would look fairly similar given what my review of the statistics has been. But as to the issue of community trust that's a different issue. And though we have outlined and hopefully we will have signed like I said by even end of next week, research procedures to look at that issue, right? That's different than what you're asking me to look at in the reporting structure.

>> Councilmember Pyle: I asked that in light of the fact that our IPA this year was able to look at more cases. So the end result, the end conclusion that she reached was different than what had been reached before. Because there was -- she went from A to Z or A -- maybe she only went from A to T. I'm not sure how much was not looked at. My point is this, that the more we have more of an inclusion in all of the data, the fairer and perhaps the more intelligent the response would be or the conclusion would be.

>> Right. I mean, my understanding of the facts sort of in front of me, again to be a real scientist is, there's concern as to the availability of the data, and then there is also on the other hand concern about how the data biases the conversation. And so my understanding from what Chief Davis has said and what other chiefs around the nation are saying is that these reports bias the conversation in terms of, well, if there's an inequality it must be prejudiced on the part of the police department and that's a concern for the police department. It's also a concern for many, you know, engaged citizens. On the other hand if there's a concern that with the citizens that they need access to forecast and they want a transparent

communication, then the appearance of something, well, look, it's the appearance of something, okay? Those are competing claims, two very different issues. Right? That's a political determination unless the good people of San José really want to draft me out of UCLA, to come and run for one of your offices, and I doubt if I could do a better job. And I'm not in a position to offer a recommendation on at this point, without the MOU in place, certainly.

>> Councilmember Pyle: Thank you I appreciate that.

>> Yes.

>> Councilmember Pyle: In reference to giving information wouldn't it depend on this situation, for example if you had the chart up earlier that had a whole list of questions if you will or circumstances, I don't know if you could put that up just for hot second? Okay. The type of crime, let's say we took the crime with the little boy that was just abducted, all right, kidnapping. And what are the actions? Well, the father snatched the child out of the seat and away they went and whether the suspect was, yes, it was his father. That, any kidnapping we want to get out there immediately. I would think. So as far as a balancing test is concerned, I would think that would be one of the things we would want to not spend much time on because time is of the essence in solving the problem. However, if you're talking about a homicide and too much of a release of information occurs beforehand, you can dry up your intelligence sources. I'm not sure who wants to take that one on but --

>> Well, that's certainly a law enforcement practice question so I'd have to refer that to the chief.

>> Councilmember Pyle: So that would be the chief.

>> Rob Davis: Well, clearly that's going to be part of our balancing. We need to take a look and say is there anything being asked of from us that would not only hamper the investigation but also put undue stress on some of the victims, witnesses, and or discourage people from reporting crimes and coming forward with additional information in the future. That's part of the balancing then again at the same time we have to be open to say if there is nothing to hamper those things then we could be forthcoming and provide any information we can. But I think if we're biased in any way it's perhaps biased towards victims' rights and ensuring a successful investigation and creating an environment where people are willing to come forward with information. So you're accurate on your statement.

>> Mayor Reed: City Manager.

>> City Manager Figone: Chief, maybe between you and Dr. Gough, you could answer this question for me. I'm assuming these reports are on an annual cycle right now, and so the question is kind of to Vice Mayor Chirco's concern. If there were a substitute report with a new reporting format, what period -- how quickly do you believe that newly formulated report could get published? If you're collecting the data, I'm wondering if this is more of a display issue as informed by Dr. Gough's work or history with us. So if you could just explain at what point this substitute report would emerge.

>> Rob Davis: We would have to look at the materials offered up by CPLE, to say you know what specifically are they asking for, is it a lot different than we've asked for, is it that much more time-intense to try and get to that data? But clearly as soon as we get that rather than spend the hundreds of hours we're spending on these current reports, we'd say, you've been treading water waiting for this information, and now we've got to carve out the time internally to try and get it out as soon as possible. There is no intention for any delay or not coming forwards with that, we're anxious to get to the data, it will help inform our policies and procedures. Once we get that information it would be an immediate response to try and crunch the data to try to address those variables that have been given to us.

>> And actually if I can as well, one of the things that was of paramount concern for me on my first site visit here and subsequent communications between the San José police department and the CPLE has been what is the turn around going to look like and what is the data transference going to look like. And San José is peculiarly well positioned to get access, to give away access to data in an unprecedented fashion, in a tremendously speedy turnaround. So given the fact they're so understaffed compared to comparable departments around the country, the response times for the records that we've requested that are publicly available, the statistics that we've requested that are publicly available, has been remarkably fast. I would not anticipate that we're talking about in a year or two. I'm anticipating that we're talking about in a month or less once the actual recommendation was formulated.

>> Mayor Reed: Okay, I know there's some people here want to speak on this topic, so we have discussed the records issue. The reporting issue. And anybody wants to talk on any of these now is the time. I have cards from Doris Carr and Forrest Williams.

>> Good afternoon, everyone, and thank you. I just want to advise you that the only issue I'm speaking about this afternoon are the release of police records, not the statistical information that was just being

discussed, but going back to Mr. Manheim's discussion, the substance and factual circuits subject to the CPRA. To remind you all of where we came in, is our basic position has not changed, which is, we believe that an expansion of the California public records act is preempted by state law. And I do know that the City Attorney disagrees with that analysis. But one thing has changed. Since we embarked on this discussion, it seems like probably close to two years ago, and that is, that the people of the state of California passed proposition 9 in November of 2008, which is also known as Marci's law. And what that did was to expand victims' rights to privacy. You probably already know that the California constitution has the right to privacy. But under Marci's law and I'll refer to that here, there was a constitutional amendment passed to provide and expand victims' rights to privacy. So I do want to say that we are very close to an agreement, in trying to hammer out something to give the police guidance in what they should hand out in response to a public records act request. We do think that having guidance would be helpful, so that the folks at the police department know what it is they ought to consider as they look at a public records act request. Our primary concern at this particular point is, number 1, with the factual circumstance, which is the third bullet down on the screen, which is whether the suspect is known or unknown to the victim. And I think Councilmember Pyle's example although it was related I think to the statistical discussion is really illustrative. The police, under the public records act, have the discretion, in your kidnapping example, whether we want or they want to release that information because, rather than whether hindering an investigation it is going to help the investigation, by having people be on the lookout for this child who is known to the victim. But there are other circumstances, where the police may want to use their discretion, because whether or not the suspect is known to the victim could lead to that victim's identity being known. Where Marci's law says that -- well, let me go back. Number 1, release of that information could impede the investigation, rather than help it, and the police should have the discretion to make that judgment. And then, in some cases, it might endanger the victim, and the victim's family members or associates on the other hand. So Marci's law as just mentioned, prohibits disclosure of victim's address or telephone number or release of information which could result in the disclosure of that information. So number 1, I would ask, why is that information important? I mean, I know people want information. But I think it's not a bad question to ask why is that information important. But if it is important, then we believe that Marci's law needs to be considered, and that's why we have continued to ask for inclusion of privacy rights within these factual guidelines. In other words, I think at the end of the language that's been proposed under this latest version, the last paragraph talks about the police department will only release information consistent with all other obligations and limitations contained in the CPRE and other state and federal law but it doesn't give you any guidelines as to what those are. And when you have a right such as Marci's law which is into the constitution, this is not just a statute, this is a constitutional right that victims have. And I'll again just refer back to Marci's law itself. Sorry, this is the problem of not signature at the table.

>> Would you like to --

>> No, that's okay. But under one of the subsection, I think it's B-1 and then B-4, and I'm just reading this from the statute -- from the constitutional -- from the language of the statute -- I'm sorry, from the language of the initiative. In order to preserve and protect the victim's right to justice and due process, a victim shall be entitled to the following rights: One, to be treated with fairness and respect for his or her privacy and dignity and to be free from intimidation, harassment, and abuse throughout the criminal or juvenile justice process. And then down to 4, to prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant which could be used to locate or harass the victim or the victim's family, or which would disclose other confidential communication. Now, there's been some discussion that we have this balancing test, and that takes care of victim's rights to privacy. But I would direct your attention to the actual language of that balancing test. Because that balancing test balances the public's need to know, against the public's need or the nondisclosure. I'm not talking about the public's need for nondisclosure. I'm talking about the victim's need for nondisclosure. And those are two different things. So the balancing test, in my view, doesn't really cover the victim's right to privacy. Now, I will say, because Marci's law is brand-new, only came in in November '08 and we have implemented it in the city police departments and through the D.A.'s office and we have cards from the A.G. averages office and we have it on our Website and all this stuff. It hasn't been litigated yet. In some ways it may be that the effect of Marci's law could be in conflict against the PRA, because now we have constitutional rights for victims and I would also point out Mr. Manheim does indicate in one of his memos that victims of some crimes are protectable under the CPRE, and that's true but those are only victims of sexual assault and domestic violence. Marci's law applies to

all victims of all crimes. So that protection under the CPRA does not encompass all victims of crime. I would also point out that the victim feedback that you got from faces, the commission on status of women and rape cries was concerned about release of any information pertaining to victims. The last concern we've made throughout this process is not about victims' privacy rights but about the privacy rights of people who have been accused of a crime but have not been charged with a crime. And again, I'll just remind you that we've discussed that there apparently are no protections against someone who could be the subject of a police report that is totally unfounded, where no charges are filed, that is basically a false accusation and someone can come in, the media or otherwise, a landlord or potential employer, get that information and put it out on the Web and have no ability to deal with that. And so I'm concerned about those people' rights. There hasn't been really any or much mention of that although I think the ACLU did take up that part at the outset. So I have some suggestions. Try not to come only with concerns, but to come with some solution. So I have several. One is that we propose that there be included a provision that indicates that information should not be released if it would constitute an unwarranted invasion of privacy. Now, again, the discretion is within the police department to make that determination. Now, I would submit to you, if you have victims' constitutional rights at stake, that the victim has standing, and should probably be noticed, about whether or not they want that information disclosed. Now, that might be cumbersome, but again, I didn't make the law. I'm only telling you what it is and seeing if we can figure out a way to enforce it. But I think it is an important-enough constitutional right that it should be included not just wrapped up in other state or federal policies, such as stated in the current format that these guidelines have but should be set forth. One way to do it should be included as I have suggested, language that indicates that the information should not be released if it would constitute an unwarranted invasion of privacy, which is one suggestion. Another suggestion in terms of our top concern out of the factors that are here on the screen would be simply to eliminate whether or not the suspect is known or unknown to the victim. We really have a few concerns about the other ones. We could theoretically think up some concerns about those but our largest concerns again are on behalf of victims. So taking that one out would also satisfy some of those concerns, and again, I would ask what is the importance of that information? Did police can release it if they choose to under that example that Councilmember Pyle suggested. And then my last suggestion would be to include some language as an alternative suggestion, indicating that Marci's law is a constitutional right and needs to be considered in weighing whether or not this information should be disclosed. And again, I would point out that the police, like any public agency, ours as well, we are bound by the CPRA. And so unless we can come up with an exemption that precludes us from disclosing information, we're bound to disclose it and we have to come up within a timely period the reason we're not giving that information. And from my standpoint our primary concern, as I've said at length, are victims' privacy rights, but also interference with investigations. And I'll just remind you, there are no -- with -- with this balancing test that came up for vote yesterday, there was the policy about the 911 tapes. But I think it's really important again, to keep in mind the differences between the cases that we've -- I've come before you in any event for discussion on these 911 tapes. The 911 tape that was released in the Santa Clara police department shooting, where the man shot his family, and then killed himself, is not a criminal investigation in the standpoint -- that man who killed those people is dead. We won't be charging him with any crimes. But the 911 tape in the Daniel Sam shooting is still the subject of a criminal investigation. And I think it's very dangerous for the city council or the Rules Committee or whatever the structure is to put itself in a position to start making determinations as to whether evidence in a criminal case should be disclosed. And I know that we're not at the end of that, and that the rules committee set forth some guidelines with notice to the District Attorney, as well as the Chief of Police, at the end of some -- where there's been some determination as to what happens on that investigation to revisit that, and I think that's fine. Someone can then make a public records act request. But I think again, getting in the middle of criminal investigations is not a legislative function. It's a court function. It's my function. And I think it's a very dangerous place to go. So unless there are any questions, I might have some comments if you'll indulge me, if Mr. Manheim reads Mr. Robinson's but those are the end of my comments today.

>> Mayor Reed: Okay. Forrest Williams and Schuyler forest and then we'll hear from Bert Robinson in some other ways.

>> Councilmember Pyle: The new Bert.

>> Thank you, Mr. Mayor, rules committee, I'm here on behalf of the Commission on the Status of Women. On June 19th, we received a letter from the City asking us to comment on the guidelines that deals with the substance and the factual circumstances of a criminal case. So we did respond, and our

greatest concern has been mentioned already, is that we have concern regarding the constitutional rights regarding privacy, we're also concerned about the safety, the security of individuals who are victims. We want to make sure that any data that's provided will protect that class of individuals or people. My understanding of the guidelines is that the police is attempting to define what substance and what factual data means. Because the CPRE is silent on that definition. With that definition this is an attempt to put forth what it is that we should provide. In the context of exposing individuals, that has to be weighed against the necessity to provide information. There's always requests for information. If you give this, then there's going to be additional requests for more information. So we must take a place, and say that data will not be released if it's going to impact the safety, the privacy and the constitutional rights of individuals that are victims. So in a nutshell, that's what it is. We will be following this all the way through and make sure that, as you progress, that we will evaluate, and we'll get back to you in regards to the status of women, in terms of what it is that they feel the recommendations, we've given our recommendations and we hope that you will consider them, and it's crucial for the safety, privacy, and the security of the victim, primarily women and children. Thank you.

>> Mayor Reed: Schuyler forest.

>> I'm not here to comment on the actual policy proposal. We've sent a letter and I think we've staked out our position very clearly. I just wanted to comment, though, on a statement made by the District Attorney, that both the District Attorney's office and the police department are bound by the CPRE. Unless they can give valid reason, information is released. I just want to give information from our standpoint, the community standpoint. We have a uniquely secretive police department. We have on multiple occasions made annual requests for use of force reports. These are underlying reports which are incredibly easy to redact private information, because almost no private information is on these, and on an annual basis we are told no. Not that we can't have some of them because there's an ongoing investigation but a blanket no response and this is very symptomatic of this police department. Thank you.

>> Mayor Reed: Bert rob I be son has a statement, I guess he's unavailable but he has asked Tom Manheim to read it. Why don't we do that.

>> Tom Manheim: I will channel Bert Robinson. First, on the factual circumstances, Bert says, "On balance, I think this may improve operating procedures in the police department. I want to be clear however this is not the reform the Sunshine Reform Task Force recommended and that it does not go beyond existing law in my judgment. It simply gives the department clearer guidelines on how to comply with the requirements of state law as it now stands. Because this is simply a procedure change I believe there is no need to write this into the sunshine law. The sunshine law should be reserved for areas into which the city is pledging to go beyond state law. There is no need to for the City to adopt its own law pledging to do a better job of following state law. Now, on the subject of police statistical reports, Bert says, I would urge the Rules Committee not to abandon existing report practices without a specific commitment to do something different. The annual use of force report is already overdue, at such time as the department proposes a specific alternative to that report the issue can then be debated. I would urge the committee to instruct the department to use the 2009 use of force report and the traffic stop report, which is two years year overdue, as soon as possible. As an aside I thought this is what Rules already told the department do the last time we discussed this issue. Then on the subject of fire statistical reports, I remain unconvinced that there is nothing the fire department can do to improve its statistical reporting. I would suggest the following action, request that the department return to the Rules Committee with a summary and copies all statistical reports it currently provides to any agency, county, state or federal. I believe the department can make work that it already does -- I believe the department could make work that it already does the basis of a more comprehensive regular report to the citizens of San José that could be posted on its Website for easy access. And that ends Mr. Robinson's statement.

>> Mayor Reed: Okay. That was all the requests I had to speak on it. So bringing it back for some discussion. One comment I had on the staff report regarding the law enforcement records section. There was a note in the staff report of three of the organizations that had opposed the original Sunshine Reform Task Force recommendations. And somewhere in our records, there were like 20 organizations in favor, and I don't know, half a dozen to ten opposed. And I don't want to lose track of that because I think it's important information. Is that included in the binder that's in the clerk's office and available on the 18th floor?

>> Tom Manheim: And we actually have a copy of the binder here on the table. All of the correspondence that we have received is included there. I would have to go back and check to see if

there are any entities that actually showed up to meetings and spoke but didn't provide us with written correspondence. We certainly note those.

>> Mayor Reed: There is a coalition that sent in a letter and there's a bunch on that, I wanted to make sure the council is aware of all of that correspondence when it gets to the council. Recommendations for guidelines, is the staff contemplating putting that into an ordinance or into departmental policy?

>> Rob Davis: It would be a policy we'd have in the research and development unit that actually handles these types of requests. They would obviously need to coordinate with the bureau of investigations and others, but some of the things that have even been mentioned as recommendations are things that we currently do anyway, for instance contacting victims, finding out how they feel about things. We could certainly codify that if you will in terms of a procedural issue but that's where it would most likely go.

>> City Attorney Doyle: Mr. Mayor, one of the issues I was discussing with my staff today was not just in the context of these reports, but what we talked about yesterday, public records generally, as well as all the other sunshine requirements that we passed. I think they all need to be put in one place, so it's easy not just for the council and us, as staff, but also, for the public to understand that where they can find this. So I think ideally, when it's all said and done when we're completed with all this work we'll try to bring something back in a package, which -- that doesn't mean that the department may not have its own guidelines how to implement. But we do want to make sure that the public has access and can find this, find the rules.

>> Mayor Reed: Okay. One thing I'd like to add somewhere on this -- on these guidelines, is a reference to the victim's right to privacy. It's of great concern to not just the D.A. but other organizations. And I know once you start making a list of all the things you are going to start paying attention to you ends up with two pages ever stuff. But that one I think is exceptional in terms of the level of concern arounds I don't think it hurts to say state and federal law and some concern for the victim's right to privacy, some phraseology like that.

>> City Attorney Doyle: I agree, if a blanket statement is proposed I wouldn't especially want to put in, but the way this reads now is, subject to limitations with CPRA or certain other type of law, including without limitations, the privacy rights of individuals. So I think we can really put that in there specifically that would capture I think the intent of what everybody was talking about. I do want to note though that when we look at this staff has really worked hard on that we're trying to balance constitutional provisions like the court would do while prop 9 was just passed, putting Marci's law into place, when you have a constitutional right of privacy, prop 9 was passed a few years ago which put in the constitution the public records act essentially that broadened access or at least some argued broadened access to public records. So we're really trying to reconcile different constitutional provisions. We'll try to do that in the language.

>> Mayor Reed: You won't get the answers to that until you get some decisions out of the court. But we'll do our best to figure that out. Then the other thing that I mentioned earlier was the idea of discontinuing the publication of these reports is something I don't support, just the language of it. I think we wait and we defer a decision on that until the public safety committee has had a chance to do their work, get the input from CPLE. Because I know the Public Safety committee is going to have some interest in data and analysis and I think waiting until they have a chance to do some work is okay. But I'm not ready to say we're never going to publish these reports again. That's all. Just a language change. So I would certainly not want to discontinue.

>> Rob Davis: Mayor, I just wanted to be clear that that's not our intent, nor has it ever been.

>> Mayor Reed: Well, it actually says "until." I just react to the term, that's all. Anything else from the committee to add on this?

>> Councilmember Pyle: Move to approve the report, as amended.

>> Second.

>> Mayor Reed: Motion is to approve the recommendations as amended. Further discussion? All in favor? Opposed, none opposed, the question is what do we do with it now, how do we get it to the council, when do we get it to the council? Tuesday, the 25th, we just emptied that agenda.

>> Tom Manheim: I'm afraid, I won't be available. Our goal is to bring it back to the city council towards the end of September. It will take us a little time to turn it around and a couple of key members of the team including the two people sitting here actually have some vacation plans. So it's going to cause a little delay. (inaudible).

>> Mayor Reed: We're going to take a vote on whether or not you deserve a vacation. [Laughter]

>> Mayor Reed: We'll defer that decision. Not going to turn it down. We're going to defer. Let me see if I had one more comment. I thought -- when it does come to the council, your attachment C which has a response to the request for comments, I think we need a similar kind of attachment with the response to the first set of recommendations, with those names of organizations on both side of the issue.

>> Tom Manheim: And we can easily do that. We actually I believe have an index of all the written responses we've received, so far. So we would just add to that, any organizations that aren't reflected in that.

>> Mayor Reed: Yeah, because I think I've seen that before. I can visualize it but I think it's important for the council to just realize that we've been at this a long time. A lot of people have had an opinion on it. And it needs to get to the council with their deliberations. Anything else? Okay, we're completed on that item. Which is the last item on the agenda. If we have nothing else listed, open forum, anybody wish to speak under open forum? Mr. Wall?

>> David Wall: First I wanted to thank you, once again, Mr. Mayor, and councilmembers, who have forgone your salary increases. This has to be repeated that you, especially you Mr. Mayor, have not taken the salary that you're allowed to take. Now, there's an accountability factor here that involves the City Manager's office, this is important in relation to this Tesla Motor business. Mr. Mayor and council you have relied on the office of the City Manager in my opinion to your catastrophic detriment in this particular incident. In the office of City Manager specifically the Office of Economic Development. This director has failed to deliver the services for which he was hired to do. No menu of solutions to go after, aftermarket, for electric car products. Nothing has been tendered. Nothing but the loss of prestige, potential jobs and revenue have been lost, either through negligence, or incompetence, or factors that are unknown to the public at this time period. So at some point in time, at-will employees are at will. It's not personal. You failed to deliver what you're hired to do, you're now excused from service. And this should start not at the lower levels of the organization but at the very top. Because you don't have the money now to be nice to these folks and it's not a question of being nice, really. It's just a question of business. And Mr. Mayor, these directors make twice what you make. Almost two and a half times what a councilmember makes. Under my administration it would be without question, they'd be gone. Thank you.

>> Mayor Reed: That concludes the open forum. That concludes our meeting. We're adjourned.