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Rules and Open Government Committee Meeting for June 3, 2009. First item is agenda order, I would like to take item 12.3, the public records act request on the 911 tapes at 2:00. We will be done with the agendas by then and there are couple of minor things to fill in to get to 2:00, because some people may not be here until 2:00.

>> It is 2:00.

>> I'm sorry. I just said take it at 2:00. Okay. What day is this?

>> Agenda review, if that makes you feel any better. Today is Wednesday, 2:00.

>> The meetings usually start at 1:30. Okay. Never mind. Let me start over. We will take that at 2:00, we will take now. How about that. This solves the whole problem. Okay. Unless somebody objects, we will do this that way. We don't need a motion on it. We will take that up first. That is eight public records request. Appeal by the Mercury News for the release of 911 tapes. Let's hear from them first.

>> I'm just going to sit here so I can see the Power Point. We're told there are technical difficults with the Power Point. It was perfect when my son finished it but I screwed it up last night. That is a very frequent story. You don't believe it, just ask my son.

>> Most of us have experienced that. So anyway there will be a couple places were I will ask you to imagine what the slide would like like if it were done correctly. Let me go faster, worried that my presentation is long. Under state law, San Jose is not required to release 911 tapes, but it has the option to do so. I want to be very clear when I start out what the situation is. We're requesting that you make the discretionary decision to release the tape why did the city decline to release the tapes? This first part is a quote here from the office of the chief in response to the public records act request it treats communication records and request for service as part of the record of the investigations that is exemfrom disclosure. The department is saying it simply doesn't release 911 tapes, not in any particular instance or any particular kind of crime, but across-the-board. We confirmed in follow-up interviews with the police this is a blanket policy. The quote from the refusal letter is a requirement to withhold the authority but it is not an explanation of why they did. Other police departments do release 911 tapes. Now, last night on my computer screen there was a newspaper clip below from this from the recent murder-suicide in Santa Clara area, and they did choose to release the 911 tape. Even San Jose has released these tapes in the past. Here is an example from 1994 there was an issue in 1994 involving a fire medical response and controversy over that in which the tape was released. Is there another possible standard? Or is there a possible continue to consider if you're trying to decide whether or not to release 911 tapes. In one section, the government code offers some useful language suggesting useful information can be disclosed unless would endanger the successful completion of the investigation or related investigation. When we interviewed other police departments, this seemed to be the standard they used, some considered privacy interests. The distinction I'm drawing here, the police department said in its refusal there are is not going to release it because it is a record of the investigation. This suggestion here goes a step further are, not just that the record is part of the investigation but its release would endanger the successful completion of the investigation. The San Jose police department has not said the release of the Pham tape will endanger the investigation. In fact, if I read his op-Ed clearly this morning, I don't believe the chief argued that in this particular case in that article, either. I hear the department officials have acknowledged privately that the information in this 911 tape would not endanger the investigation, they've not said that to me, however. Is there reason to think that the release would endanger the investigation. I'm not an investigator, but let me throw key issues on the table here. No one has been charged or is at large. There are small number of witnesses and all have been interviewed. The public interest is higher in an officer-involved shooting than in many other kinds of cases. Would San Jose set a dangerous precedent by releasing this tape? This is an argument the department has made about the tape and also about police reports generally. It is not this one that concerns us its is precedent. Government code section 6254f gives us discretion for other types of information considering potential safety and threat to the investigation. Using discretion to disclose in one instance, I would argue, does not permit the discretion to withhold in another instance. I would like to ask the rules committee to consider two actions. Releasing the tape in this case, I would like to point out that when the chief in his article this morning argued or noted his concern about releasing evidence in advance of the grand jury hearing it is the case that evidence of many different types is released in advance of grand jury hearings, trials, hearings of any sort all the time. It is just something that happens in the criminal justice system. It is rarely a problem in the consideration of a case. The second thing that we would like to request is a broader -- is

that the rules committee consider a broader policy. We're suggesting a clear policy that the city will weigh the public interest against the potential harm in considering the lease of future tapes. As I understand the department's policy, it does not conduct a sort of balancing act now. The department has stated its current policy, it considers neither the public interest, nor the potential harm in releasing the information. It withholds the information because it can. This is a quote and a story that we wrote about police department policies on releasing 911 tapes. Police departments live on public trust. You take that away and you have nothing. We have to be as transparent as possible because the public are our customers as well as our bosses. And that comes from Santa Clara police department Phil Cooke, explains why they often choose to release the 911 tapes. That's it.

>> Okay.

>> Mayor Reed: Okay, the first question I have is for the city attorney in terms of the standards for us to consider. This is not a balancing act area, right, so are there any standards that we need to consider, legal standards?

>> City Attorney Doyle: Well, Mr. Robertson is correct when he said at the outset that the police department has the discretion to decide whether or not to release the tapes, or tape. This is a matter that is clearly exempt under the public records act, exempt from disclosure, and I think you need to hear from your police department and the district attorney is also here because there is a pending investigation and that is the rationale that the department is using in not releasing the tape. I do want to note, just an internal, your own house rules, that the rules in open government committee is charged with considering and making recommendations to the full council on these types of decisions, so you're not the final arbiter here, you make the decision to bring to the council to release or not.

>> Mayor Reed: Okay. A couple of questions that came to mind first is, we're focused on the investigation but there is also the potential for a grand jury indictment and a criminal prosecution, and I think there is another public interest in those proceedings that are sort of beyond us. We may be done with our investigation and I understand we are, but the grand jury has yet to be convened and there certainly is no decision so I'm interested in what impact release of a 911 tape has in those other areas that may be of some relevance to it. So I guess I would like to hear from the chief and then the district attorney is here, as well, on those. So chief, I guess the first question, have we done with our investigation in terms of the city of San Jose's part of this or is there still an on going investigation we have to be concerned with.

>> Mayor, thank you. Rob Davis, chief of police. We have completed the investigation, it has been turned over to the DA's office. I would simply defer to the DA's office to handle questions on that.

>> Okay.

>> Good afternoon. Mayor Reed and members of the Rules Committee, I have several concerns with the posture of this request coming to the Rules Committee. First is a procedural one. As the city attorney and Mr. Robinson have acknowledged, there's no question that the Public Records Act exempts from disclosure a record that is part of a pending investigation. The remedy, when an entity believes that a public record is being withheld unlawfully, the remedy is to go to court, file an action, and ask the judge to release that public record. Now, that hasn't happened here because, I believe, both the city attorney and Mr. Robinson acknowledge, even the editorial the other day from the mercury news, acknowledge it is legal to exempt this 911 tape from disclosure because it is part of a pending investigation. So really, what we're here for, is to have the media ask you all, a legislative body, to release evidence in a criminal case. And I would submit to you that that is really not your job as a legislative body to make release of evidence that is going to be used in a criminal case. I think that the Rules Committee considering these types of requests to overrule somebody deciding not to release information might be totally appropriate for typical legislative matters, ordinance issues, budgets, taxes, fees that type of thing, but that is not what we're here about. So my concern is, number one, that it's a procedural wrong way to go to ask you to make these kinds of decisions about evidence. Now, as you know, the protocol in Santa Clara county on an officer-involved shooting is to have a grand jury investigation of that shooting and to determine whether or not the officer or officers should be charged with a crime. The 911 tape will clearly be a part of that proceduring, so although the San Jose police department is done with their investigation, the grand jury conducts its own investigation and

examines witnesses, the same witnesses who have probably now been interviewed by the police department but there will be further examinations of those witnesses at the grand jury proceeding. So to release a 911 tape to the public creates several problems from my perspective. One is, it gives an opportunity to witnesses who will testify at a grand jury to hear what that 911 tape says. Whereas if it is not released pending that grand jury investigation, witnesses don't have an opportunity to hear it and perhaps shape their testimony when they get before the grand jury. It could also, being part of the public domain, interfere with our ability to call randomly selected grand jurors who may not be qualified to sit on a grand jury because they have heard information that is going to come before them and there by might not be fair and impartial and could have formulated an opinion. And again, I'm not talking about whether or not this particular 911 tape is helpful or hurtful, but at a whole it is evidence that will be heard in a grand jury proceeding, and those witnesses have not yet been interviewed by the grand jury because we've not yet convened them. I think there are also some privacy concerns, and again, I'm not going to talk about the particular concerns of these 911 callers because I don't have any specific personal knowledge about what they would say, but there are also some privacy concerns about whether or not people who call 911 have a choice as to whether or not their voice is heard out on the 6:00 news, whatever it is that they're saying. My last concern, maybe not my last, my next concern is that the 911 tape is only a part of the story. And I am concerned, whether it is helpful to the police department or hurtful to the police department, people obviously will form opinions about what happened at that address, but they will only have one snippet of a piece of that puzzle, and I would submit that it really could affect the public's perception of what happened because we will not have gone to hearing for quite some time, we're waiting now on the toxicology report, as well as the coroners reports, which will take some period of time, so just because the police department has concluded their interviews does not mean we're ready to go to a grand jury. We have to wait for those other processes to take place. So you are then looking at putting a piece of information, a very tiny piece of information, out to the public, which will form whatever opinions, good or bad or indifferent, without benefit of the full story. And I don't think that's in anyone's interest because our primary concern should be that there be a complete, full, thorough, fair, impartial objective investigation and consideration by the grand jury as to the conduct of those officers at that time. I would also tell you, of course, you've heard me before while we've been at these rules committee meetings talking about the release of police records, and one of the cases that has been discussed is city and county of San Francisco, the case that where the city and county of San Francisco have a sunshine ordinance that releases investigative reports, police reports. Even in San Francisco, they exempted any release of records until the case was closed. Even in San Francisco, under that case, and without getting too bogged down, you will recall that that case, it was found that they could not -- that the state law overshadows the local ordinance by San Francisco. So from my perspective and when I'm asking the Rules Committee to do is not to recommend to the city council that that tape be released because this is not the right body to make that determination, it is really the court, but they haven't done that because they know they won't win there. And because this is a pending case, and releasing parts of a pending case is exempt from the Public Records Act and there is really no reason to change any kind of balancing test, balancing the integrity of a criminal investigation verses the public's right to know, a tiny piece of the puzzle, I think is not a difficult balancing test to make, and that the balance should weigh in favor of a full, thorough, objective investigation by the grand jury when the time comes. And I'll take any questions you might have.

>> Mayor Reed: Okay. Any questions from the committee for anybody here? Councilmember Pyle.

>> Councilmember Pyle: Thank you, appreciate your presentation. We're all entitled to fair and speedy trial, I don't remember which one that is which constitutional right that is, but if that is released prior to the grand jury investigation, that could hinder that whole thing from happening in that more people would be exposed to it, it may have to go, you don't take grand juries out of town, but it will take that much longer, the very speedy part of it would be jeopardized, would it not?

>> I don't think it is necessarily the speedy part of it, councilmember Pyle, I think it is really just the fairness part. For the reason that it could affect people's testimony later on you, once they hear, programs they hear the public's reaction to the 911 tape and now want to shape their testimony slightly differently from what they said earlier, and it just really creates lots of problems because, again, and one thing that might be interesting for the Rules Committee to consider, is -- and the Mercury did cover this, there was a lengthy investigation, you may or may not know in Palo Alto last year of the children's theater and accusations and concerns about embezzlement going on and after all was said and done there was not any criminal filing and the city of Palo Alto engaged the services of an auditor to go in and look at that investigation to give some lessons learned to the city and police department as to how that might have been better handled, and one of the issues I thought was interesting, when

thinking about this particular issue, is that the auditor recognized the intense pressure being brought to bear but elected officials and the media and community members to release information from that investigation and that the way that that happened was harmful to a number of people involved. I'm not going to draw exactly direct correlations, it was not an officer-involved shooting, it was an investigation of the folks who ran the children's theater, but I think in retrospect again, when that auditor went in and said the police department bows to that intense pressure and released portions of information that auditor made recommendations or certainly made observations that that caused a number of problems within the community. So it might be interesting for you to look at that.

>> Councilmember Pyle: Thank you for that.

>> Mayor Reed: A question for Burt Robinson. One of your slides in your slide show that your son did so well, if you could go back to the slide where you talked about a possible standards that was referred to in other parts of the public records act that dealt with on going investigations, I didn't memorize it as I was going through.

>> Just to be clear on what this is, there is information under 6254f that departments are generally required to release, but there is some language in 6254f that says in these certain cases, you can with hold the information. And what I'm suggesting here is that there is a piece of that language that might -- since that language has been tested in court that might work actual applied in this situation. I'm not suggesting the law currently applies to this situation because it does not, but I'm throwing it out for your consideration.

>> Mayor Reed: I'm trying to think about this situation and some standard to explain what it is we're doing and that was the closest thing that I've seen here. So if I were to look at this and try to work through with that kind of a standard, we had the police department investigation, but then there is the grand jury investigation, so my problem trying to figure out, will this endanger the successful completion of the grand jury investigation or is that my job to worry about now that the police department investigation is done.

>> This language says or related investigation. That's the way they worked it out in the public records act, for whatever that is worth.

>> Mayor Reed: In my role as a mayor making a decision about my city, I have nothing, we have nothing really to do with the grand jury investigation, that's out in the district attorney's bailiwick but in terms of trying to apply the rule, should I apply whatever rule we have to the system as a whole or the state department saying well, we're done with our investigation so we don't have to think about it because it couldn't possibly impede our investigation.

>> City Attorney Doyle: Mr. mayor, that is clearlyly a factor in making that decision. This is a public record in the Public Records Act, it is exempt from disclosure. The city has established a protocol where by through an appeal to this committee, this committee can recommend to the city council to exempt or to wave that exemption and to allow partial or complete disclosure of the public document in this case it is the 911 tapes. What the district attorney is telling you is that there is a pending grand jury investigation, that there is a -- that the 911 tape is only part of that story and there may impact the investigation one way or the other, and those are factors I think that the committee and the council ultimately will need to consider in deciding is the time right to release the tape now or authorize the release, or is it at a later date. So the short answer to your question is it is a factor that you need to consider in moving forward. If you're being told it may interfere with the ultimate investigation is something you need to seriously take into consideration.

>> Mayor Reed: There is another issue raised and that is the privacy interest and I think this is in a special category, this case, an officer-involved shooting and I think the public interest in an officer-involved shooting is different than the ordinary run to the mill drive-by shooting or anything else, so if it were just the privacy interest I would come down on the side of the public who should have access on this, more important than the privacy interest, so to me that is not the issue. The issue is the on going investigation that is still under way that the District Attorney has been talking about. Then a related question is, what if it were the knife that was involved, apparently involved in this, if someone wanted to see the knife, is that a public record?

>> No, it is not a writing. The public record only deals with writings.

>> But other evidence, that maybe was in written form, suicide note, I don't know if there were -- speculating here about what other written documents, is there something peculiar about 911 tapes that should be different than any other kinds of record that we might have in our possession?

>> The 911 tape is a document that is generated by the city in terms of the call comes into the city and the city keeps the tape, so while it is kept in electronic form, it is deemed a public record under the Public Records Act, again, but because it is a record, it is covered under the disclosure act.

>> And any other writing the police that may have come in possession of during the investigation.

>> City Attorney Doyle: If it is in our possession.

>> Mayor Reed: The other question is who has the record? Do we have the record or does the district attorney have the record. We finished our investigation and put it in a box and put a bow on it and delivered it to the district attorney's office.

>> We both have the record, we've got the 911 tapes and provided copies to the district attorney's office so both agencies have access to that 911 tape.

>> Mayor Reed: Is there anything in the law that says the district attorney has control of the evidence? I know in the police department they've got places where they store evidence, they've got the evidence lockers and all those kinds of things and they control the evidence. Are we prohibited about making recommendation about the evidence that the district attorney now controls. The fact that we have a copy of it doesn't answer the question fact district attorney is in charge of the evidence it seems to me we may not have the ability to tell her what to do with what she is in charge of.

>> Well, the way I would respond to that, mayor reed, is that because the investigation has been turned over to my office, this is now a state investigation, because a district attorney, and I represent the people of California, and again, it's our position that state law preempts the field of the city coming in and making its own little rules that are going to impact a state investigation, which has rules that underlie that investigation. So I think that it does provide you with, I would suppose the ability to say, look, the investigating, the investigation is out of the city's hands, although they certainly do have a copy or the original of the 911 tape, but the investigation is now in my office, although I would not say it would be any different if we were having this hearing today and the investigation was not going to be turned over to me until two weeks hence, I don't think it would change the analysis from my perspective, in other words, I don't think we want to create a system while we have to run in and do our pra and hurry up and do it before we turn it over to the da or to have the police department peel they need to rush this investigation over so they don't have to respond to a pra. And that is the problem with having, again, in a criminal context, a criminal investigation context, having this system where a legislative body is looking at public records act requests as they relate to criminal investigations and setting up a process to overrule what is clearly exempt, I mean, Mr. Robinson said that already three times, clearly, these records are exempt from disclosure, he is simply seeking for you to overrule the decision that the law says that this is exempt, and I don't think you should do that.

>> Mayor Reed: You have something?

>> City Attorney Doyle: Yes, the public --

>> Yes, the public records does that but in terms of coming up with your own process, the process we've come up with is let the rules committee make that decision in the end but state law does allow you to exercise discretion determining whether you should release or not. That being said, if the district attorney is coming in and saying this is going to prejudice or interfere seriously with an investigation that is now in her hands, that is a serious factor you need to consider in whether or not you would want to even consider releasing this tape.

>> Okay. There are couple people from the public that want to speak on this. I think I'll take those comments now. Joe Pellum, you'll correct me on the last name, Joe Pellum I think, and David Wool.

>> Thank you, I will be brief. To address an immediate concern of Miss Carr is that this, having sought public records myself and having gone to court myself to get public records, I can tell this is the proper form. You, the members of the council, are the privileged holder for the records of the city of San Jose, not the chief of police who is the department head, you are the ultimate deciding factor here and as the city attorney told you it is up to you, the California state law allows to you weigh the requirements of the city and the police chief and district attorney are asking to you uphold. Secondly, if we had gone to get, if the Mercury News goes to court to get a writ to provide the documents to them, it would be the city attorney defending the chief of police's decisions so you are the ultimate holders. I read they don't give out 911 tapes, that is absolutely incorrect. And I possess some myself. One thing the council needs to understand is the communications process has different levels of communication. I think what the Mercury News is looking at is the first level, that is just the call from a private citizen who is not an investigation to a dispatcher who is not an investigator. The investigation starts when the police officers arrive at the scene and start determining there is crime, we need to investigate. The other levels of communication you could have on the tapes in theory are the radio, car-to-car traffic, the dispatcher talking to the police officer say going to this address and I don't think in this way the mercury news is asking for those, they're asking for a small snippet of the first call. I think privacy acts allows to you redact the names and even the unit numbers of the officers, dispatch might have casually said. But in closing, the ultimate solution to this problem is you, as a council, need to understand that that tape will only exist for six months, then it is gone, you guys will get rid it my suggestion is that at the end of the grand jury proceeding, you give an order that that tape is to be released immediately and I think that would essentially, the concerns of the police, the district attorney and the mercury news, I believe the grand jury proceed willing happen quickly and at the end there will be a determination but the important part is the public is assured their police did the right thing and that could be accomplished by an order from the city council that at the conclusion of the grand jury process that tape comes out, and thank you very much.

>> David wool.

>> As a bifurcated response, first case is I would like to give my appreciation to the DA's very articulation of the issues at hand. She covered everything that I would like to talk about, but this regards to one snippet, this fairness issue is material. You allow these tapes to be released, which I do not support, you will then create an undue anxiety in the public that can be utilized by the media for their own regards. This will cause an unparalleled distrust of the police in my opinion. I believe that the deliberative process in so far as the grand jury process, the DA's investigation has enough checks and balances to eliminate any type of sculdugery involved in this serious issue. The next portion of this proves my case in chief about these special interest corporate entities that sit on the sunshine reform task force, the mercury news in particular, who Burt robinson is a member, and how he uses this Sunshine Reform Task Force as a member of the community, then at the behest of the corporate entities, the heartless, soulless entity of the mercury news puts on the other hat and says give me this information so I can sell, or charge, not indirectly, to charge for advertising and to sell newspapers at the public's detriment. So I charge you this, can you no longer defend having these special interest corporate entities on your task forces. This prove mice case in chief on this very issue and this goes to the metro on that which therefore the entire work product of that Sunshine Reform Task Force has been tainted materially and should be cast out. Thank you.

>> Mayor Reed: Questions? District attorney.

>> I just wanted to respond to a couple of points of the speaker who talked about the destruction of the tape. I certainly can assure you we will not destroy that tape, and I do think that -- so two things can happen, the grand jury investigation can indict police officer are officers for whatever crime they believe has been proven, in that case, the reports become public records. In the event that the grand jury decides there has been no crime committed, I think that would be the appropriate time for a public records act request to be made and for there to be this type of discussion at that time as to whether or not city council would vote to release information or my office would consider that on its own, or in response to a public records act request of my office, but I think at this stage where the investigation is still pending, it is not the place to make that decision.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thank you. I think it is important do we protect the tape pending the grand jury investigation. I think it is important for a number of reasons. We've heard very clearly from the district attorney and the chief of police why they feel it is important, and they are the people investigating and prosecuting this case, if it ultimately goes to a criminal crime. I think we have the responsibility to maintain the integrity of the grand jury proceeding and the investigation. I think we also have to look at the fact that we're also talking about one of our employees who is the subject of this grand jury investigation and we can't lose sight of that, that we have to make sure that our employees are treated fairly and have an opportunity for a fair and impartial hearing in front of the grand jury. I know there were some comments quoted from the lieutenant from Santa Clara PD, Phil Cooke who I happen to know very well, and Burt pointed out the comparison to the Santa Clara murder-suicide which is really an apples and orange comparison because by definition in murder-suicide the person who is being investigated not going to be going to the grand jury because they're no longer alive, so they're not the subject of a grand jury investigation. And you're not tainting a trial. You may still have the criminal investigation to sort out the facts of what happened but you're not ultimately trying to get an impartial jury hearing like we are in the fact of this officer who was involved in the shooting. So I don't in anyway support releasing this at this time. I concur that once the grand jury investigation is over, then it is an appropriate time to release the tape and any other information that would help the public come to reconciliation on this event.

>> Mayor Reed: I tend to agree with that. The district attorney has made it pretty clear she is concerned it would endanger the successful completion of the investigation but I would certainly, I think, we can just say that we have no reason not to release it other than that, and that it's upon the completion of that investigation it would be our intention to release it, and that we would direct our staff to preserve it in the meantime, so we don't have to worry about it somehow disappearing, even though we have copies of it. But it does leave open some question about the trial and what happens after that, but I think clearly once the grand jury investigation is completed, you know, and we can just say that up front, that our investigation is done and it really is an issue about the district attorney's investigation, which is related to this, and you know, or if the district attorney decides to release it sooner, that would be okay with us, as well, because our investigation is done. Burt, did you want to comment on that?

>> A point of clarification. We had submitted both the issue of this tape in particular and the broader issue of the city's policy, the police department's policy on 911 tapes, and the reason we did that because my understanding of the police department's policy it doesn't hinge on whether or not there is a grand jury version the police department's policy is we don't release 911 tapes, period. As much as I enjoy coming to the rules committee, and I do, I certainly intend to request on behalf of the newspaper 911 tapes in the future and it would be helpful if could get some clarification. I think I'm hearing Councilmember Constant and the mayor say that once the grand jury investigation is complete, we don't see a problem with that. That's not my understanding of the current policy and so I'm looking for some additional clarity here, so maybe Rob and can I work up the next one between the two of us.

>> I think part of what we should do after we deal with the specific one is ask the staff to work up some sorts of a thoughtful policy about what we ought to do. As I said earlier, this is an officer-involved shooting so I'm setting aside the privacy interests, the privacy questions that might be important just because of the nature of the case. It could be different in another thing, and I think that is a different part of the policy, but I do think we ought to have a policy on it so that it's consistent across time and the chief and staff have a chance to think about it and come up with something, that is a separate issue from these particular tapes.

>> I'm ready to take the stab at a motion if you're ready.

>> Mayor Reed: Okay.

>> I make a motion that we deny the request for release of this tape at this time, and to refer staff to look at discuss, and develop a policy as it related to the release of 911 tapes to bring back to the rules committee and ultimately the council at a later time.

>> Second.

>> Mayor Reed: I can support that but I would like to go further and recommend to the council and make an affirmative statement when the grand jury investigation is done, as far as we're concerned we will release it and it will be up to somebody else to do something about it.

>> I actually meant to say that because that is what my comments were earlier, I just missed it as I said my motion.

>> Mr. Mayor, if I can suggest we come back as part of -- we still have outstanding thoughts on the audience, the police records issue and maybe that is the appropriate time to come back with policies on 911 tapes and releases. And I would also like to suggest that maybe to order the staff to release the tape after the grand jury proceeding unless staff can show cause as to why they should not be released. I think we need an opportunities because I don't know what is going to happen, you know, when the grand jury proceedings down the road but we would release it unless we can come back to the committee and the council and show cause as to why we think it shouldn't be released, I think we need to keep that option open.

>> Mayor Reed: Okay. You want to speak to that?

>> Yes, I agree Mr. Doyle and it would be my request at the minimum, first of all, I don't support just saying at the end of the grand jury, when is that, the day after, I mean, we're going to release it, I would suggest something a little move prudent like your intension is to release it to give notice to my office, for instance, with a date certain, 30 days, to come and show cause why it shut not be released and if we don't do that, because I can't foresee what will happen but of course being careful and cautious about making those kinds of decisions, I would want an opportunity to be heard on that and then you can decide what you're going to decide and decide not to say anything, it is difficult to know what is going to happen in the future but at least I would want that opportunity.

>> So I guess --

>> Modify your --

>> Modifying that motion. See if I can get this right here, so it would be to deny the request at this time, to, at the end of the grand jury investigation -- let's see. To make the tape available for release after the grand jury investigation provided that the district attorney and the police chief are notified and given ample time to determine if there is further need by either of their agencies.

>> I think that covers it. I'm not very articulate but you know what I mean.

>> Let me ask questions about how that would work. Grand jury finishes its work tomorrow. We tell the chief, the district attorney we're going to propose to release this tape and then they say no, we object, we have a reason, it is a really good reason, then what.

>> It comes back to this committee and you hear the reasons. The intent of the city is to release the tape at the end of the grand jury process unless they can show to the committee cause why it shouldn't and the committee considers that and whether it is going to change that order.

>> Mayor Reed: How long after the grand jury investigation is done in terms of the noticing. I don't want it to drag out for six months after the grand jury is done. Do we put it on the first available Rules Committee agenda?

>> The first question is how much notice do you want to give to the district attorney, and the second question is setting a hearing date. If there is an objection to or there is a concern they don't want it released. So that's the -- district attorney says 30 days but you may want to shorten that time but then you would hear it if there is a concern registered at the next available rules date.

>> Mayor Reed: I would suggest what we do is kind of the way we're doing it now, we put it on the next available Rules Committee Agenda so if the grand jury gets done on a Tuesday, it would go a week out and if it gets done on Thursday, it goes on the following Wednesday, just the way we put together a packet and our timing so we get a very quick decision or a quick opportunity for the Mercury News or anybody else to argue the point. And that

way, we just give everybody notice, the public has notice, it is on the rules committee agenda just like it is today, and the district attorney doesn't show up or the chief doesn't show up or Mercury News doesn't show up, then we do whatever we want. [laughter] But procedurally, that doesn't take a lot of time and official noticing and 30 days here and 60 days there.

>> I think that's fine.

>> Mayor Reed: Seconds? Is that clear enough?

>> Yes.

>> Mayor Reed: One thing about the Rules and Open Government Committee, we can move rather quickly. In government terms we move at lightning speeds.

>> City Attorney Doyle: I'm reminds, just for the record, when we provide notice to the police department and the district attorney's office, we will also provide notice to the individual on the tape. We do that just because of privacy concerns and if they want to raise any concern, they can do so, as well.

>> Mayor Reed: I think that would be a good idea. Anything further on. This we have a motion. All in favor? Opposed. None opposed. That is approved. This will go as a recommendation to the city council on what council agenda?

>> 16th.

>> Mayor Reed: When we report out on the 16th. Thank you very much.

>> 23, my apologies.

>> Mayor Reed: This committee report out is on the 23rd of June. All right, back to the beginning of the agenda.

>> A question if you want this cross references or just part of the committee report.

>> Mayor Reed: Just part of the committee report. All right that takes us to June 9 agenda. City council. Any changes on page one? Page two or three? I see we have five ceremonials already -- I hope there aren't any more to add. Page four or five? Six or seven? Eight or nine?

>> Item 3.6, you do have a surprise sheet of paper that reflects the amended language that will be printed on the agenda.

>> Mayor Reed: That's the, regarding the operating local number three -- okay. Item 4.2, is that really going to go on the ninth? I heard that staff wanted to change the date.

>> Through the amended agenda, we will request deferral to June 15.

>> Mayor Reed: All right. Page 10 or 11? Additions, I have a request from a manager to add an item on the agenda for happy hollow park and zoo, approval of something or other. Substitution of the contractor. And we need a waiver of sunshine on this?

>> We put the staff report out at the same time the June 9 agenda went out and we did make it very public we requested at the site so it does conform to the spirit in it went out the same day but it was not officially on the agenda. This is a time sensitive item, Katy Allen is here to answer any question about the time sensitivity.

>> Mayor Reed: Any questions on it? It looks okay to me. Any other additions.

>> Motion to approve as anded.

>> Second.

>> Mayor Reed: Motion to approve as amended, including the Happy Hollow items. All in favor. Opposed? None opposed. It's proved. June 16 draft agenda. Anything on page one?

>> Mr. Mayor, I asked for a closed session to begin at 9:00 and hopefully that is enough time.

>> Mayor Reed: Okay. Anything on page two or three? Four or five? Six or seven? 3.7 is the budget message, I want to come back to that and we talk about the sequence of how we handled the meeting. Anything else on six or seven? Page eight or nine? 10 or 11? 12 or 13? 14 or 15? Our general plan hearings on -- these are the none major amendments, I guess. Page 16 or 17? 18? Starting to look like a June hearing. In terms of the agenda link. The additions I have for requested for excused absence, Mike June 17, councilmember Nguyen, and those are the adds. Any other additions or changes.

>> Move approval.

>> Second.

>> Motion is to approve as amended. We will come back and talk about the sequence. Somewhere in here I thought we had an addition to talk about, the capital deferred maintenance item.

>> We will hear that later.

>> Mayor Reed: That is going to come on here. We have the budget message to talk about the delivers maintenance infrastructure issues before we get into the budget discussion, I think we should do them early in the agenda. We may have some affect on some other agenda items. Is there anything else on this agenda besides those two items we ought to be thinking about a specific time on? We do have an evening meeting. Vision San Jose 2040 final selection of gross study scenarios. Is there any reason to move that in the evening instead of the daytime? I suppose the task force has had plenty of time discuss this so we're not likely to get a lot of community discussion at the council meeting on it. Probably can stay on in the afternoon. Okay, we'll try to organize it to do the budget stuff at the beginning in some fashion. The consent calendar will probably take up the budget. Infrastructure deferred maintenance piece and then the budget message piece.

>> We could always look at time certain against next week since we're two weeks out, if we want to change anything.

>> Okay, we have a motion or I think we approved that already. Had another question about June 9, and that was whether or not we picked up the deferral from yesterday's meeting on the council and mayor salary issue.

>> Yes, that is picked up and that will reflect on the agenda --

>> Mayor Reed: Okay.

>> Since you're back on that 9th, closed session, may want to do that at 9:00, as well. In fact, if it goes on next Tuesday, a need for a 9:00 the following week so it is crunch time and it may be a good idea.

>> Mayor Reed: 9:00 closed session on the 9th.

>> And the 16th.

>> Mayor Reed: Let's make it 6:00. No, just kidding.

>> We might be back at 6:00.

>> Mayor Reed: So that will modify the 9th on that one, as well. All right. That takes us to the June 15 special meeting draft agenda. Number 3.3. That one is easy, it is just a hearing on the budget. The last hearing before council goes on the 16th.

>> Did hear you say easy and budget in the same sentence? [laughter]

>> Mayor Reed: The agenda was easy.

>> Oh, okay.

>> Mayor Reed: That is the only place it is easy. All right, --

>> Motion to approve.

>> Second.

>> Mayor Reed: We have a motion to approve. All in favor? Opposed? None opposed. That is approved. Redevelopment agency, June 9. Anything on page one, closed session, timing need to be modified?

>> We'll make it consistent.

>> Final version.

>> Mayor Reed: Anything on page one or page two or three? Page four or five? No additions or changes.

>> There are no changes to this agenda.

>> Mayor Reed: Okay.

>> Move to approve.

>> Second.

>> Mayor Reed: Motion is to approve. All in favor? Opposed? None opposed. Those approved. June 16 redevelopment agency agenda. Anything on page one? Closed session is already set for 9:00. Anything on page two or three? Page four or five? No written requests for changes or adds?

>> Mr. Mayor, if agreeable by the mayor and the committee we would like to request for the agency agenda to be heard first on the 16th, we anticipate the entire agenda will take about 15 minutes, considering the city agenda as much more complicated and cumbersome for the 16th.

>> Mayor Reed: We need to take up the budget stuff first and then the agency agenda, and then on to the city agenda. The agency needs to be there for the budget discussion, as well, so it is really a joint item. It is actually the budget message should be a jointly agendized, we usually do. Consent calendar budget agency on to the city agenda.

>> Thank you.

>> Mr. mayor, not to complicate things but item 8.1 on the agency agenda, the convention center expansion items, on the same agenda, on the city agenda, 9.1 joint item is the formation of the convention center facilities district, you may want to hear those together, even if the agency items go first we can, you can take that out of order since it is a joint item.

>> Mayor Reed: All right. So budget, or consent calendar budget joint items and agency items, probably sequence that works.

>> Would you like a printed agenda this week to reflect this order?

>> It would probably help everybody. As the agenda gets healthier.

>> Consent, budget, joint items and agency, and then the balance of the agenda.

>> Mayor Reed: Right. And in the budget category is the two, the infrastructure maintenance deferred backlog and then budget message. All right, we have a motion on that one? We're done with 16th.

>> Move to approve.

>> Second.

>> Motion to approve if necessary. All in favor? Opposed? None opposed. That is approved. No legislative update, no additional meetings to schedule, but we have to talk about June 30 and whether we need to scale meeting do we have one scheduled is the first question.

>> Yes.

>> Mayor Reed: So that is on the official calendar already so we don't have to worry about telling people. The question is is there anything we need to do on the 30th, do we need to have the meeting I guess is the question.

>> I've asked my staff and I'm told there is some ordinances on the 23rd that are part of the budget -- ordinances related to budget matters so the second reading would be June 30 or the first meeting in August, so there is some need for that. If we are not having a June 30 meeting, then I need go back and see what we absolutely have to do and let you know that we may need a waiver from sunshine on it because we would move things forward a week.

>> I know there are a lot of ordinances related to budget actions and pushing those into August is probably not the best thing to do.

>> City Attorney Doyle: And I have to get a list so I can come back next week at rules, at first we thought there were contracts but we were able to work around those.

>> I would like to mention on behalf of the IPA who is not here, she had asked to tentatively bring forward her annual report on June 30 and I think her schedule is keyed up to have the document distributed and printed and ready to go on the 30th.

>> I would need to get an excused absence on the 30th.

>> Darn. [laughter]

>> The items we would bring forward on June 30 would all be submitted to the office on Monday so we would walk them in as adds to the June 23rd agenda and in the packet on Friday. We may need labors and will bring that to the rule's attention next Wednesday.

>> The agency does not anticipate having any items for the 30th. However, if there is going to be a session if something comes up, we may consider adding it into your agenda.

>> why don't we have everybody take inventory and next week we will talk about the possibility to cancel the meeting since it is on the calendar. Everybody would like to have that happen, but there is some work that has to be done.

>> Do you want this actually printed on the -- I'm sorry, put on the printed agenda under meetings scheduled?

>> Mayor Reed: Yes.

>> We won't be looking at the June 30 administration drop just yesterday so we will look at that next week.

>> Mayor Reed: Yes that way I won't forget it, as easily. Okay, the public record. Anything in the public record the committee wants to pull for discussion?

>> Motion to open file.

>> Second.

>> Motion to open file public record. Opposed? None opposed. And appointment to boards, commissions and committees. Appointment to the mobilhome advisory commission, request from the public to speak on this item.

>> Martha O'Connell, endorses Mona Lang and Jacquie Hefner, and we have concerns about Margaret Greg, she was not recommended and the project diversity has a strangle hold on who gets on commissions. But having said that, this lady was referred by the staff and with all due respect to Council Person Constance saying he thinks staff should recruit, I will give you two examples why they shouldn't, and follow this up with a lengthy report on staff. Last year, fees were doubled for the rental dispute program. We didn't know about that, we were given no input at all, it was in a separate meeting instead of being brought to the floor to talk about it. Then we find out shockingly on April 28 there is a huge modification of the mobilhome rehabilitation program, it was brought to the HCDC in July, it was hidden from the Mack on 9/25, 10/16 and 11/19. We never heard about it. Nobody came and talked to us about it. It was proposed by staff who arranged a conference call on 2/19/09 between two city commissioners, they quote, fully endorsed this program. Folks hadn't had a chance to give any input, okay, so what I'm saying to you when the folks have an agenda in the dark, he says when you don't pass this doubling of the fee our staff are going to lose hours, that is what you told the people, and we don't have a chance to give input, there is a conflict of interest when staff recruits commissioners that are going to go along with the program so we hope that you guys will let us have input on this rehabilitation program before you approve it.

>> Mayor Reed: Anyone else? That is the only card I have. Okay. Do we have a motion of some kind?

>> I'll make a motion that we approve, and sorry, Martha, we don't agree on this one.

>> Mayor Reed: Motion to approve the recommendations. One item on the correction of the name. Clerk got this, Monica. All in favor? Opposed? None opposed. That is approved. Item 10.1 is a workload assessment regarding deferred infrastructure maintenance needs. And a recommendation to agendaize for the June 16 council meeting so we talked about putting this on the agenda.

>> I would like to make the motion to add and my thanks to Ed for the time he spent sorting this out with me.

>> Mayor Reed: The short answer is, we're not asking Ed to recalculate everything down to the dollar. A big job. There was a second. Anything further on that? All in favor? Opposed? None opposed. 10.2. Review council special events policy. 10.3, council expenditure and reimbursement policy. 10.4 an update and another policy, I thought. 10.42, resolution changing some other policies. So one question I have is the middle of June the best time to have these policies on the council agenda for discussion. I know that the clerk has spent some time at least briefing members of councilmembers staffs, but sometimes the word doesn't get to councilmembers, especially when we're really, really busy, which June is prone to be that. Just a point to raise among my committee members, not dealing substantively with any of these but whether or not we can move them to some time in August if it matters one way or the other.

>> We recognize the timing really is bad with so much going on in June. The council expenditure and reimbursement policy, as you know, you approved over a year ago with direction to ask to come back in a year, review it and come back and provide some amendments if necessary, and so we've been attempting to try and live up to that mandate. Meanwhile, we spent about a year working on the council special event the policy so that we would have a good firm policy in place for you and for us to support you. So we're simply here because we've concluded that review, we've concluded the drafting, we have a done about as much outreach with the various offices and administration we partner with and with your council offices but it is certainly your call if you would

rather put this off, I don't think we have any objections to doing that, there is nothing that says we need to get this over the goal line by June 30, we've just been tracking it and trying to say --

>> Mayor Reed: I appreciate that.

>> -- on course.

>> Mayor Reed: I'm not speaking substantively on any of these.

>> I might make one suggestion. The expenditure policy might be good if we end up having a June 30 meeting to hear it and get it in place because then it falls in line with the beginning of our actually using and expending funds in the new budget so the timing on that would just be good. It wouldn't be a disaster if we heard the beginning of August but if we're going to have that June 30 meeting for other reasons, maybe we could do that other one, I have a problem with August, I think the city manager --

>> I was going to add to that, I'm not that familiar with what Lee is advancing, but if it can be, if it is something that could be on consent, maybe having it on the 23rd is doable. I don't know if this needs to be discussed or not.

>> Our recommendation to go on June 9 was tentative because it was looking lighter than the 16th, but then again, we don't have to go on the 9th, we're just trying to facilitate the process.

>> The 9th is lighter than the 16th.

>> I wanted to say in light of the fact did you such a great job, one. Two, you've met with our chiefs of staff and they've expressed absolutely no concerns about that, you did a beautiful job with the consent -- I back up your ideas.

>> Mayor Reed: There is a couple areas there will be discussion and maybe we can -- because there are some things that are substantially different than last time so I think there might be some discussion. Not a lot, but I think there are some areas because we're changing things like we used to allow advertisements and then prohibited advertisements now bringing them back and it was a pretty weighty discussion when we had it last time so I think there will be some discussion on that. I know I have personal opinions on that. I think there is some nuance in the authorized travel and other entities and using the peak car in you're on the retirement board that is designed to make it easier for some people and makes it a lot harder on other people so there may be some areas we have to work out so I don't know if it is a quick yes, not that it is not good work, of course.

>> Mayor Reed: Why don't go through these and see if substantively we think they're ready to go without modifications or if they're so complicated we had need a lot of council decision and maybe don't take them on all at one time. It depends where we are on the substantive issues.

>> I think that is what you were expecting us to do, look substantively at them to see if they're ready to. Go they appear to be.

>> Yes, Mr. Mayor. And the assistant city clerk is here, Sandy Lee.

>> There she is.

>> From the city attorney's office is here, and have been working very, very closely on both of these policies.

>> Mayor Reed: Okay why don't we start then with the expenditure reimbursement policy, 0.38 and see if questions committee members might have into do you want Dennis to do an overview or just take questions. He can run you through real quickly what the -- okay. Your call.

>> Mayor Reed: Let's run through some questions here.

>> So I do have a question I think it will be page four of section eight, the purchase of an advertisement from a nonprofit entity, and I remember the discussion we had was pretty deep on this one particular issue because of the question of whether we are buying advertising for the council member or providing money to a nonprofit. I know in our office, we have felt it was better just to give the money as a grant to the nonprofit, then they expended no cost and there was no implicating we were trying to advertise my name. I just that I what we have works well and I'm not sure why we're going back. If there is a reasoning of something that came up that I'm not aware of, but I just think we were on the right track the way we did it and I'm not sure we should go back, personally, but I'm more than willing to hear any other opinions on that.

>> Thank you, Councilmember Constant. We've had a great deal of discussion with council staff and the attorney's office on the advertising question, and I can tell you that over the last approximately two years that the policy has been in place this has been probably one of the most problematic areas and there has, frankly, been a mixed practice where some people will give a grant to an organization and then have their name appear in the sponsorship listing and we've worked with the council office to ensure it identifies the grant is from the city of San Jose, councilmember X. There have also been a number of requests to have what I term acknowledgement ads, the city of San Jose and councilmember X want to congratulate a particular neighborhood association, school, nonprofit organization for some accomplishment or some event and we feel that the proposed language addresses that concern but putting some parameters in there it is a direct purchase from the nonprofit that there are guidelines as far as the appearance of the ad, may actually work to create some template ads we could provide to the council offices where they could drop in a simplified message or something like that we put in provisions the ads would be approved by the office of the city clerk to assure compliance and those kinds of things. So we think this is kind of a compromise approach where we've been able to address the concerns of the council members and decide to do community outreach and recognize various nonprofit agencies but also put parameters on the type of advertising and structure of advertising so it does not to the city of San Jose.

>> My comment there is if we end up going that way, instead of just guidelines there should be just an approved template, because I think it will not take long before things stray, and you have something that is due at 1:00 on doing it at 11:00 and send something out it will be an evolution of getting us right back to where we were. I still don't agree with it but if it goes forward it should be a template, this is the way it is. You have a vertical, a horizontal, a square, make it fit.

>> I said guideline but I meant template, a camera-ready art so there is standardization to the advertising.

>> On that one, the key issue, I remember the discussion pretty well, been through it a couple different times, the key issue is whether or not the advertisement looks like it was paid for by the person as opposed to participate for by the city, and to make that clear so that it, a member of the public doesn't look at us spending city dollars to promote the candidacy of somebody in some form because it often happens during the campaign season which can go on a long time so that template I think is really important, because I agree with Pete, if we don't have a fairly tight definition we will end up to where we were, which is anything goes.

>> We share that concern and we want to make sure that there is a proper attribution line so there is clearly established that the advertisement is paid by the city and will include things like the city logo and those kinds of things so it is clear it is a city advertisement and maybe sponsored by a particular councilmember but that the city will be prominent in the advertisement.

>> I would like to add to this language, it says must properly attribute the city but including the logo in the advertisement. I would say "paid for by the city of San Jose" ought to be in there.

>> We will make sure that that occurs.

>> Okay. You have a comment on that one?

>> That is fine with me.

>> Community members like to know the council person is supporting them, it draws that line and makes it clear who is paying for it.

>> Mayor Reed: Okay. Next topic.

>> Just a comment on, I guess, it is letter I, number 2-b, thank you for getting the city sponsors events, the state of the city, I know that is something we experienced a lot of heartburn the last couple times because of the new policy and it I think it is important to reward those committed district and city leaders we should be bringing to these type of events that are about them. The area that I have concern on, this section L, which is travel, and I'm not -- and hopefully this is all going to go away, my concern is we won't have councilmembers on retirement boards, but the way this is worded between section one and section four, it's hard to say -- it's hard for me to understand you're saying you can only use your card -- you can't use your card at another agency, but it sounds like you might not be able to do it if you're on city travel or retirement board. And that would cause a lot of hassle for those of us who are on the council and the retirement board that are both city agencies, both coming out of city funds. I really don't want to be using my credit card to do this and deal with expenditure, so I don't know if I'm misreading it but I don't think it is real clear.

>> If it is not clear, we can certainly work on the language to make it clear. What we are trying to convey is that if travel is being paid for by another entity that we should work that entity to make the travel arrangements paid for by that entity, so that's the retirement board, for example, that the retirement board would pay directly for the costs of the convention or training or whatever the event is the air fare, hotel, and those kinds of things so there is a clear distribution of costs. We've frankly had some issues where we've had it, has been unclear who is paying what, and so we've been working with retirement services department to try, as an example, to try and clarify who is paying for what and the method of payment so we have a clear accounting trail. We've had similar situations where the councilmember may be traveling for an outside entity, noncity entity, and we've had some problems in rectifying the travel expenses because some was paid by the agency, some was paid by the city, and what we're trying to do is establish a clear accounting trail for who is paying for what.

>> And I appreciate that it's just very difficult. Because every time I've had someone else arrange my travel so that they could take care of the page that been screwed up. But when my office handles it, number one it gets done in a quarter of the time so we don't extend tons of money in staff time trying to deal back and forth over the phone with someone else trying to do your travel. And the other issue is we know we got to done, it fits and we could be -- if it means clarifying forms or giving better instructions so it is clear who is paying for it, I'm not adverse that, it's just if you have for the logistics end of get, and paying yourself. The retirement board is a separate entity but still the city.

>> Account repayment card have the procurement card?

>> I don't think we want to start that based on other things we're been talking about.

>> Might I suggest if the language is confusing to allow us to work with the city attorney's office and come back with a clearer language in the final draft of the revision, and hopefully, it would address the concerns expressed.

>> Although, I don't think it would be a bad idea to get clearer direction from you, because this is an issue and I think I would rather go away today knowing how the committee feels about if a councilmember travels on the retirement board's dime. I would feel more comfortable having that --

>> If it is a city entity, the rda, city, retirement board or any other entity that may exist or will exist, we should be able to use our procurement card. If it is another city, I don't think we should use the procurement card. I think that is where the line is from my perspective.

>> I would like to give that direction work with the finance department as well as the attorneys office just get some clear language on that.

>> And the theory being that internally we can make the necessary accounting adjustments with the retirement funds and redevelopment funds or whatever.

>> Right.

>> I can see where you might not be able to do that with someone else --

>> If I could jump in, I don't see a problem with that. Of course, I'm not close to the technical side of the policy, but you know, those are all city entities. The p-card should be able to be used and it becomes an internal processing or travel policy question.

>> We can look that up.

>> I would agree with that answer.

>> I just wanted to ask if it would be good to have a date that you should be to get all that arranged, let's say two weeks ahead of time so there is not a last-minute flurry that can cause problems. Would you be approving the travel?

>> We work with the staff to document the travel expenses and often times there is -- there are approvals that are necessary.

>> So it would be better to have a lot of that accomplish ahead of time rather than after the fact.

>> There are times council members need to travel on short notice so I wouldn't want something in the policy that would create an alternate problem of not being able to do something on a timely matter.

>> Councilmember Pyle: Whenever possible, arrangements should be made in advance.

>> We can do that.

>> And bearing in mind the only thing you can pay ahead of time is your transportation. You can't pay for year hotel and other related things ahead of time, you pay while you're traveling, so within your p-card you're given to using your own fund.

>> Councilmember Pyle: I'm not talking about the whole thing being listed out but some idea where you're going. We certainly not the plane effects, if those are necessary, and transportation.

>> All those are in the travel documents in the way we approve travel for council. That is the only issue I had with all of it.

>> We'll come back with some improved language on that section.

>> Mayor Reed: Any other questions on this policy?

>> I think this is ready to go whether we get it on the council agenda. I don't think there is a lot of council discussion on it based on what we've had here.

>> We need a motion to put it on the agenda? The 23rd, the least busy of the month. Isn't it?

>> So far.

>> It is going to get a lot busier. The question is, can you do it on the 9th because we have to redraft.

>> We need to make one change to that one paragraph so I can we can do that. Go ahead and put it on the June 9 as a consent item or do you want it to be as a --

>> That's fine, the advertisements, disclaimer and travel.

>> Can we do that then?

>> Let's do that.

>> Motion to approve.

>> Should we get a waiver of the sunshine?

>> We need a resolution. Maybe it would be clear if we sent it to the council agenda on the 16th, even though it is large.

>> Okay.

>> That would give us enough time to get everything wrapped up.

>> That is a motion. All in favor? Opposed? None opposed. It is approved. The next one is the council special events policy.

>> Mr. Mayor, I would like to make general introductory comments and respond to questions or I can just respond to questions, whichever you prefer.

>> Mayor Reed: This one does not appear to have a red line.

>> This is brand new that's why we have no written policy on council special events at this point in time so this is a brand new policy.

>> Mayor Reed: Questions?

>> My question is, in the area of the sponsorship agreement, in the fund raising solicitation, I understand dfr-1, I asked Greg to give me X, he give it is to me. What I don't -- I'm not completely clear on and I don't see it in this packet but I remember staff showing me a sponsorship agreement. Back on?

>> Yes.

>> That is a good thing. I just want to make sure what I saw it last to here, I was very worried we would never be able to get any because no offense to Rick or chuck but there was too much lawyers involved in the effort. So how is that plan to be dealt with now?

>> If I could explain that a little bit. Our proposal, we've listened to staff and are well aware of the concerns. We are proposing a simplified approach donations and sponsorships. For donation items, what we're proposing is we're calling it donation form, it might be something like a multicopy form, one copy to the donor, one to the council office, one copy to our office but it would be a simplified acknowledgement form what have has been donated for record keeping and making sure there is a proper paper trail. It would be a simplified approach and it is really intended for items being donated to the event without any intent or desire of recognition by the donor. For sponsorships, what we're proposing is a simplified sponsorship agreement, it would be on the order of the simplified hp grant agreement like they have with we have now, a one-pager type agreement that would establish the terms. Now we're looking at an easy to understand and easy to use form for donors and sponsors.

>> Just to be clear if Ricks donated X and Lee sponsors with Y, as a sponsor you have an agreement and there could be a company logo or a program thanks to Lee price more your generous donation. Rick wouldn't get that because his is a donation. But if we're up there talking on the mic to everyone and we think everybody made donations, that doesn't make him a sponsor and we have to go back and redo thing, right?

>> Right. That is fine. That is getting away from where we were. If we review the dfr-1 in the future, maybe those forms can be an attachment and you don't have to thrust twice. I'm trying to streamline something like that for any fund raise we make and we staple them together and submit them or pdf them and submit them verses filling out the forms with a submission at one time and donation another time period so that going forward.

>> Mayor Reed: Any other questions? I had a couple. Trying to figure out what the law of unintended consequences does with some of these things in operation, so on page four of 10, community meetings that require council approval 30 days in advance. Now, as opposed to a small community meeting that is exempt if special event funds are used, otherwise 30 day requirement some of if you have a community meeting with more than 100 people, then you've good to get council prior approval. Maybe I don't understand what special event funds are if you're just using your office budget to have a community event it is not really what we're talking about here.

>> Correct, we're really addressing events that would utilize the special events appropriation that will be created and so if you solicited funds or using funds that were donated in support of this event or another event, then there would be some approval. What we're really trying to get at is the kind of facility reservations and equipment needs and staffing more to goes g into these events, which larger scale event there is typically more staff support involved and more expenses involved so to make sure we have adequate support and facilities, we have the approval process.

>> In that, Dennis, would that include meetings at the local community centers that would be part of this process?

>> Correct. What we're trying to do is work with the existing departments, whether it is parks and rec, the community center or the library for the use of one of their community rooms to assure there are facilities available in the policy. We've stated that if council office wants the facility that is not available, there is a prescheduled event that staff would assist the council office in finding an alternate location.

>> That is great, because so often you want to have this event and something else that books into it and it is problematic so this really, clearly delineates it.

>> One of the things we've learned working with the broader staff group is that many of the departments, parks and rec, for example is programming their community center six to eight months out and that is one of the reasons we have the approval time line so we can engage with the council offices early in the process, plan and reserve those facilities so have you the facility you want for the events you're planning.

>> Thing is ending up to be a little different than what I thought it was in this area. If what we're saying is that I have something going on in my District and I want to have a constituent meeting and I'm going to have more than 100 people there I need approval by the council 30 days ahead of time. That is not going to work because we have to respond to things in the community and pull together outreach meetings if we have --

>> A double homicide or something.

>> A double homicide. If we have a kid killed, auto fatality, we may send out an invitation thinking we will have 50 and have 350 people show up. We use the library rooms and all these different things. I don't see how we would be able to comply with this.

>> We've addressed that on page four. If there is something that happened in the community you need quick response, if you are using the special event funds for are support of the event, then we would work with the council office to bring that forward in as timely a manner as possible. If you were just using District funds that would fall into the first category where it would be an exempt event. If it something you're using special event funds for, they we would work with the council office to get that approval as quickly as possible so there is provision for time sensitive matters.

>> I think then, like we have under the neighborhood or small community meeting it says exempt if no special event funds utilized that should be in each category where that applies. Quite frankly, those types of meetings, this is normal constituent outreach. We may buy bottles of water in appropriate locations and cookies or something like that but there is nothing we need a whole lot of money for some of as long as that's more clear and explicit, I think it is okay.

>> We can make that, so it is clearer.

>> And then also, sometimes we have them in school so there value no city cost what so ever, we're just going out. If I read that chart and it says a meeting sponsored by a councilmember to discuss city business with constituents involving more than 100 people, or the use of equipment, so even without the equipment I still need 30 days council approval to do it.

>> Actually, we've seen an increase in the number of school Districts that are charging if there is a council event at a school that we're, the city is being charged facility charges, custodial and evening energy surcharges and with those kinds of things we have to arrange through risk management and those -- there is additional paperwork actually required for external facilities.

>> We've been lucky.

>> That could be an in kind dose nation from the school district but by and large we've seen an increase on the school charges.

>> You've been out to the council office, I'm curious what the response is to the fee charge back which would be involved with the special events where council district budgets were paying for all operating costs for a special event.

>> I think that the recognition is that we have diminishing resources in city departments and there has been a tremendous impact on city departments in support of council events. That's one of the reasons that staff would be involved in planning the event with the council offices at an early stage, that is not subject to reimbursement. What is is staff, equipment, materials, and those would be worked out with the council office well in advance. I guess the trade off is, we're opening the potential of having donors and sponsors that the council offices can utilize in support of the events.

>> What responses have you got from the council offices? I think councilmembers are going to be surprised and they're going to say I never heard about this from my staff.

>> That is why we've been doing this, two of the briefing meetings with council staff, doing outreach with the council to make sure they understand and working with operating departments again to plan these events and work with the council offices. There have been some unintended consequences as an example in the special parks policy that was adopted in 1999, the original intent was that the facility use the permits and those kinds of things would be waved. Over the years, it has expanded so the expectation is that all city services are provided free when there is an event in the city park as an example, and so parts of this is to try and address that and get the agreement back into its original context.

>> This kind of leads to the question I brought up in the budget study session about the quote one district event per year. Is this changing that?

>> Yes.

>> Or does that still -- so that would no longer exist.

>> the special park policy which is the one free use of a park is being is proposed for being rescinded in this policy.

>> I think that might not be clear to the council. In the discussions I've heard and even from my staff was this was for things other than that or at least that was what I was hearing, not that I don't think that is a good idea but it might not be completely clear.

>> We've tried to be very clear about that in our briefings and bringing that forward and that is why it is one of the highlighted points in the memo and the policy.

>> Then there would be the question when this would take effect because I know a lot of council office have their events planned this fall, assuming that it was an item them was being covered, you know, as the one event.

>> We have language in the policy that would apply to events which are planned but not yet approved so any events in the planning stages but have not yet been approved by the council would be subject to the policy.

>> So I have an event planned for the 26th, and it answer gone to the council but now it would be subject to new policy.

>> Grandfather anything existing. I want to call to your attention, make sure everybody understands, if this goes forward, it would be the council now has up to five free uses of city hall, have it go away, no free uses at the rotunda for council offices, and that would be parts of the budget for next year, so that is something I want to make sure everybody understands, if you want to go that way.

>> The city hall use policy is scheduled for your agenda of the 16th. And so in part, we were trying to coordinate the adoption of that revise the policy along with this one. Brings a good point as Councilmember Constant has, there were really significant changes to the way the council has been doing business, if you will, lately with their special events, so it may be that we would need to provide maybe just a one-page bulleted here is the changes, you know, this is how it will affect you, similar to a sheet like we did for the councilmember expenditure policy, here are the differences in what you are doing.

>> I'm still trying to figure out how the chart works. There is a column for council approval time line. Some were exempt if the special event funds are utilized but that doesn't speak to the fee part or the cost reimbursement. Does that mean it is exempt from paying staff time or exempt from council approval?

>> We were referring to exempt from council approval.

>> So if you have a small community meeting, less than 100 people, at a community center, council offices will have to pay to have the staff time if there is staff involved in the community meeting.

>> Correct.

>> What if we have the police officers come to speak for the community, paying for cops parts of that?

>> The intent was the direct cost of the event. For example, I know the practice has been in parks and rec, for example, if the community center is already open, and there is no additional cost for having the event, the council offices have not been charged. However, the time the community center is not open and they have to bring in staff to set up and supervise the event, then there is a charge for rec leader or other staff that is brought in to do that. That would be the intent is that if there is any direct staff cost related to that.

>> So this might and question for Albert, would we need to have a rec leader, supervisor, councilmember, staff, holding a meeting in a facility, you know, because I know typically we go, set up the chairs, set up the tables, but there is someone there to unlock the door for us. How would that be handled?

>> Well, typically, Councilmember Constant, we do have somebody to open up. Turn off the alarm and then have somebody come back and do that so when somebody does respond to that, automatically there is three hours charged for the time they're there, so there is a cost associated with it. So sending them home and bringing them back is now six- hour charge.

>> Is there not a way, I mean, my employees are city employees, is there not a way we can figure out where other city employees can unlock the building and resecure it? I don't want to get to the point I want to have a community meet and it costs my office \$750 to do something, because sometime you have a need, a rash of things and having meetings all the time or you have new city policies that you want to get out there and do or all the budget meetings that we've had in the 10 council districts and I just think of my calendar how many nights I'm at ought community meetings and how many started because of my office and I worry we're not going to be able to afford it unless I get rid of somebody. The other thing, quite frankly work no disrespect to any councilmembers

but I don't think it is quite frankly the mayor or any other councilmembers business if I'm going to have a constituent meeting and I don't think I should have to get day proved by the city council. I don't know if you think the same but if you want to go out and have a meeting with your constituent meeting I don't think it is my business to vote on it.

>> It is just use the special event funds.

>> Or to use equipment or chairs. I mean --

>> Okay.

>> I'm sorry. The way this is written, you also have to do it or if you're using equipment, things like that. I just don't think it is real clear.

>> I think we're trying to recognize that there are costs inherent this these kinds much meetings and events, and I think we can work on the language a little bit if there is concern there. But I think what we're getting at is -- I do want to mention also that we've had an inconsistent practice over the last four years with the council because the blue ribbon task for on ethics required when they were doing special events they needed to come to the rules dough get approval and we've had inconsistent adhererance to those policies. I know every year we've done the community resource fair we followed the policy and brought that forward to the council for approval to recognize the money appropriated and so forth. We have a done that recently for example with Councilmember Nguyen with her prom dress event and Councilmember Pyle with her disaster preparedness events so trying to work with the council to follow the existing requirements from the blue ribbon task force. However, it has been inconsistently applied and inconsistently adhered to and parts of it is because there is an overlap of a number of policies that govern these events and that is really one of the objectives that the comprehensive special events policy is to put it into one policy than is clear rules of the road and rules of engagement so everybody knows what needs to be done and it is done in a timely manner.

>> You're doing two different things here, special event issue and policy came out of fund raising and how we broadened the definition of special event to include minor community events and anything in between. And so it has gotten a lot more complicated because you're layering on the recovery parts of it as opposed to the fund raising. I understand for the resource fair we were raising 30 or \$40,000 and there is a lot of staff costs. We recover those with fund raising to have a neighborhood meet on a development proposal and have the council offices having to pay for the staff time involved in that is way beyond the scope of what we were concerned about at the blue ribbon task force in terms of the special event. I think that makes it a lot more difficult to make it fit in one place.

>> I agree, there is a big difference between a constituent meeting and special event, and maybe there is tomorrow that come close to blurring if you're having a celebration at a community meeting but say it is separate, I think there is also, we're not recognizing that is an essential city function and part of the strategic support we are part of. We have meetings like the mayor said because of development proposals that are out of another department but we handle the outreach. I think we're getting really -- I think we're going the wrong direction it as relates to constituent meetings and outreach meetings and things of that nature. We talked recently in council about having, when we were talking about having fees and charges, having certain neighborhood meetings, organizations exempt because of what they cannot to the city, so I'm saying that I'll be paying for meeting but my neighborhood association in the district is not paying the except opposite of what it was two years ago. That's where it is kind of starting to trouble me. And then the other thing say don't want us to start paying for employees and all the sudden we start getting overhead charges on top of that that go up 60% a year, things like that.

>> This is worthy of a full discussion of the council.

>> Judy, we'll quit at 4:00. Everybody else has things to do, of course, we're not going to get gone this.

>> I'm troubled when we're being charged for constituent outreach. I understand special events, as Councilmember Constant said, but when there is a development going in, we coordinate it, we schedule it. You have a shooting in your neighborhood, which happened in mine in the last week, we're having a neighborhood

meeting and that is part of the price of doing business and we don't have the budget for that and I don't think that is appropriate to charge back to the council offices, that is part of the city services, that is our obligation to provide to our community.

>> And we were trying to address in the policy and I could tell we need a little bit more work on the language that if it's to discuss official city business, we're trying to get to land use issues and that type of thing so we can go back and do work on this and come back to the committee with an updated versioning in the future. I think that we would probably need to do that in the August time frame. I think we need a little bit more time to address the concerns that you've raised today.

>> Mayor, if I could jump in, what are the drivers of cost? Because if this is a matter of the department not having the overtime maybe we ought to look at funding the service appropriately, so I think if we kind of sort through what the drivers of cost are which are causing this charge back system to have to kick in, I think that will help us to understand, you know what, policy tweaking might be.

>> Another unintended consequence I'm concerned about, if we were to put this into place and councilmembers are then now raising money to pay for these community meetings, you're putting councilmembers in a constant fund raising mode which is part what have we were trying to get away with the special events policy.

>> Now we have to fund raise all the time because we're doing all these things all the time, not just one district event per year or big events per year. But we will be paying the city staff for their time, but nevertheless, we will be fund raising all the time which is something I would like to avoid.

>> Also sounds like it is not a one size fits all policy.

>> Anything else on this specifically? It is almost 4:00, we're not going to get done with this. You want to take this and work on it and bring it back then? At some point.

>> Thank you.

>> And then let's carry the others, the other policies, which are into the next week's meeting, I think. We've got two minutes to do the public-private partnership update, but it really does get into these policies. I don't know if you want to do the overview from two minutes or come back next week.

>>> I can certainly provide a quick overview and talk about the policy next week. The quick overview is that following the council's report on public-private partnerships last year, we committed to periodically coming back to committee in order to provide an update so this before you provides that update. I think it is fair to say this is a good user report, it reflected while things don't change overnight what is happening in particular with public-private partnerships is almost two years ago the council gave us direction look at specific set of case study and figure out what it takes to resolve them, whether a partnership or part friends, as the case may be. We did that in a number of cases and developed this policy. You've seen the report over the last year started to institutionalize that and have that take root. It has now spread to economic development, transportation, a lot of areas. So as we speak about the specifics next week on policy revisions thing reflects the evolution from case study to policy and providing more tools through the organization.

>> I have one comment in terms of the policies you're recommending changing as part of this, naming the city-owned land and facilities, I didn't have a chance to pull the old policy up but it looks like to are substantive differences there and I don't want to set off a land rush to rename buildings. But we can take up the details of that next week.

>> Assign to next week then.

>> I think that was the last item on the agenda before the open forum. Mr. Wool?

>> I have two issues. One deals with the involvement of the question from the city attorney for a training program for mayor and council.

>> You can speak to that.

>> Very, very good. The city's charge has uniformly been, I don't know where you come up, not new particular but somewhere in the administration how it is calculated, I spoke on this routinely but how single family homes are paying the lion's share of. This now, this becomes essentially problematic when you have problems at the water pollution control plant that only hand full of people no about and I'm one of those fingers on one of those hands. Specifically, somebody has been dumping dirt throughout on par 9 from construction projects. Hundreds of cubic yards. I don't know if that dirt of been tested for hazardous materials. Here is an example, a public records request in progress, I will get you the documents later, but these are funded by taxpayers who fund this cleanup. The training question I requested for the attorney to be developed for the mayor and council is to apprise them on agency theories, how to point out an agency of a corporation. And what does that actually mean. Because I honestly don't think that these folks know, and I'm not being mean, because it means people show up on task forces and there is a demonstrable conflict of interest and part of that training practice would include some professional ethics and conduct to consider on the topic of conflict of interest. And if they could sign it so as soon as they put their hand to it it become as public record, then at least I would know that they know what an agent of a corporation is and the public would know. And I would feel a lot better being the only person that seems to the know.

>> Your time is up. Anyone else on open forum?

>> None? We are adjourned.