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City of San José Rules and Open Government Committee meeting.

>> Mayor Reed: To order. This is Rules and Open Government Committee meeting for December 9th, 2009. Start with considering our agenda order, are there anything we need to move up or down in the agenda order? Okay, start with December 15th council agenda. Anything on page 1? Page 2 or 3? Page 4 or 5? Page 6 or 7? 8 or 9?

>> Lee Price: Excuse me, Mr. Mayor, go back real quick to beige 7. I want to make a note that your biennial review on ethics ordinance, will appear on the agenda, probably 3.4 on the 15th.

>> Mayor Reed: Okay. Anything on 8 or 9? 10 or 11?

>> Mr. Mayor, on item 7.4, this item is one that we would traditionally track under section 3, the strategic support section, and on item 8.1 we're going to move this item to consent. So while this agenda has been published, we'll renumber them as part of the amended agenda process..

>> Mayor Reed: So 7.4 is a public utility easement vacation --

>> We'll renumber that to the strategic support section.

>> Mayor Reed: -- and 8.1 is an agreement for architectural services, fire station 37.

>> Right, and we'll renumber that to a consent calendar item number.

>> Mayor Reed: All right, anything else on 10 or 11 or 12? I'm still worried that this agenda is way too short for the last meeting of the year. Keeping my fingers crossed.

>> Councilmember Pyle: We can handle it, we can handle it.

>> Mayor Reed: And being optimistic that it will be sort of a normal long meeting not a super-long meeting. I do have some requests to add. A presentation of commendation for the Silicon Valley turkey trot, the mayor's cup, which San José won! Some excused absences, one for Vice Mayor Chirco, one for Councilmember Liccardo. Some appointee requests for approval of some minutes. And then agreement with Macias, Gini and O'Connell for audit services. Any other additions besides the one the clerk mentioned earlier, biennial ethics review?

>> Councilmember Chirco: Move approval.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion is to approve. I had one other item, that I think is on our agenda for later. And that is the rules for conduct of meetings, is that on for us to discuss, as part of this meeting, which would then presumably go on that agenda?

>> Lee Price: Yes, it is.

>> Mayor Reed: All right, I think we have a motion to approve here as amended. All in favor? Opposed? None opposed, that's approved. No meeting December 22nd. Redevelopment agency December 15th agenda. Anything on page 1? Page 2 or 3?

>> Mr. Mayor, Gary Miskimon, redevelopment agency. If I may item Anne 8.1, the annual report of financial transaction, we do need to request a sunshine waiver for that item. It was distributed yesterday but that is not in accordance with the normal ten day distribution. And item 8.2, the cooperation agreements between the city and the agency, we'd also request a sunshine waiver for that. That item is still being finalized today and will be distributed no later than this Friday.

>> Mayor Reed: Then I had some questions with regard to the budget, and our negotiations with the county are we going to have some items we need to get on the agenda?

>> City Attorney Doyle: Yes, I think that's the one add. Gary mentioned the city co-op agreement.

>> Mayor Reed: Okay.

>> City Attorney Doyle: 8X. I guess you'll get to it when you get to your adds. And your budget discussion has been deferred from yesterday to today. That will show up.

>> Mayor Reed: All right, we'll see that covers page 2 and 3. Anything on page 4 which there's not much there. The request for additions is an agreement with Gilbane Building Company regarding the convention center, keeping that moving, and a -- no?

>> Mr. Mayor, if I may, the Gilbane item, 6.2 is on the currently published agenda and it is being dropped. This is just a change to the language to clarify that the funds will be liquidated at the end of this year, the remaining \$1.1 million and the second one is the one that Mr. Doyle referred to as the proposed list of contract and payments. And we would also ask for a sunshine waiver so we can add that item and that will be published also no later than this Friday.

>> Mayor Reed: Okay, so the Gilbane thing is part of your effort to liquidate contracts and deal with encumbrances and generating some additional resources?

>> Abi Magamfar: That is correct, Mr. Mayor, that's part of our \$5 million goal.

>> Mayor Reed: So the change is the recommendation is to drop it, is that correct?

>> That is correct.

>> Abi Magamfar: The agreement is set to expire December 31st. So therefore, the fund in the amount of \$1.1 million on December 31st would be automatically liquidated.

>> Mayor Reed: And then the other addition is the list of contracts and payments that need to be made between now and February 23rd?

>> Abi Magamfar: That is correct. That memo is being drafted and we anticipate that it will be released no later than Friday.

>> Mayor Reed: Any other changes or additions?

>> Councilmember Pyle: Move to approve.

>> Mayor Reed: The motion includes the sunshine waivers for 8.1 and 8.2?

>> Councilmember Pyle: Uh-huh.

>> Mayor Reed: Yes it does.

>> Second.

>> Mayor Reed: Motion and second to approve as amended. All in favor, opposed none opposed, that's approved. No meeting on December 22nd. Upcoming study session and administrative review, none. We don't have a legislative update for today. Meeting schedules, nothing to talk about. Public record, anything from the public record that anyone wants to pull for discussion?

>> Councilmember Chirco: I just had a question on the VTA and the listing of transit routes that are being discontinued. These are the bus changes most especially. And getting this information to the school, well actually, to be sure the schools get it because there's a fair amount of kids that ride the buses to school. And I don't know if any of these routes will affect routes near schools. Maybe get it to the D.O.T. so that they can get it to their traffic liaison like Laura Wells.

>> Mayor Reed: Well, let's refer this to D.O.T. staff to make sure that the VTA does it.

>> Councilmember Chirco: Okay.

>> Mayor Reed: And if they don't then we'll need to do something. But I would hope that VTA would include the schools as part of their notification system, but you never know.

>> Councilmember Chirco: Having been there, you're right.

>> Councilmember Pyle: We are meeting for the budget tomorrow so we should know more.

>> Mayor Reed: That's right, VTA budget study session or whatever it's called tomorrow. Anything else?

>> Move to note and file.

>> Mayor Reed: Motion is to note and file. All in favor, opposed, none opposed, that's approved. Don't have any appointments to boards and commissions to consider. We have the first item to discuss is the City Manager's contract approval. Authority, staff analysis that's been done. And I want to thank staff for doing this analysis. It's actually reading through it it was kind of familiar because we did that kind of analysis a couple of years ago when we changed the authority, and I remember the hopes of actually saving some staff time, as well as processing time, for everybody else.

And it certainly seems to be the case. Is there any additional report on this?

>> We are prepared to provide a PowerPoint presentation or we could just provide a recap if you'd like. I think what's key here is the referral requested a 12 month pilot period, so the Rules Committee can assess the impact and decide whether to put in place a reduced contract authority on a permanent basis. We have, based on the nine quarters of information that we have, we've analyzed that, we've provided our forecast of what we think the impact would be. So that council would have that or the Rules Committee would have that information available to make the decision. We are recommending that the current contract authority be upheld and maintained at \$250,000 as well as the procurement for services at a million. And we are interested in learning more about the goals of the referral, so that we can hope to achieve those goals within the current contract authority. So if you would like a PowerPoint presentation we are prepared to provide that. If not we could just take questions.

>> Mayor Reed: Well, let's see what questions we have. I think we already had the pilot period, because that was what we were doing before we made this change. We pretty much piloted it, so that allows us to know what the costs are. And expectation that we might add three full-time positions to handle all the paperwork is not really one I want to do, and given this budget cycle, also it doesn't look like it would actually save us any money. It wouldn't make any difference on the budget side. It would just be an expenditure without much offsetting savings, if any. Other questions from the committee?

>> Councilmember Pyle: Could it be ultimately more expensive?

>> Mayor Reed: Yes, it could be more expensive.

>> Absolutely. Scott, would you like to add additional comments?

>> Mayor Reed: Scott Johnson.

>> Scott Johnson: Thank you. Yes, Mr. Mayor, members of the council and the committee, Scott Johnson, director of finance. I'm also here with Mark Giovanetti, our division manager for the purchasing division in the finance department. But to the point, we did provide -- the City Manager provided a comprehensive report. We have a number of attachments with the report. I -- from our perspective we think that the procurement reforms that we've put in place are working well. And we have a lot of sunshine to Deanna's point with regard to quarterly reports going directly to council related to the increase in contract authority. In the staff report, it does highlight the analysis that we conducted, and the additional costs that we estimate that this proposal would require. And of course, that's at the time that we're currently looking at reducing our staffing costs. And so it's very challenging economic times. We're continuing to look at streamlining efforts, efficiencies and balancing out appropriate controls and procedures to ensure transparent procurements, while at the same time making sure that we're not a bottleneck for the departments and for the city in procuring relevant services and goods. So the comprehensive report I think speaks for itself Mr. Mayor and members of the council. Thank you.

>> Mayor Reed: Thank you. One of the things that I remember that motivated the council when we changed it in 2007 was to try to make it easier for small businesses to do business with the city and not have quite such annual involved process to get those contracts approved. And I'd just be interested in any experience in dealing with -- you talked about the city side and the additional people we would need but on the other side, on the small business side what kind of experience are they having?

>> Scott Johnson: Well, maybe Mark can speak to that. And previously, Walter Rossmann, who used to be our chief purchasing officer, we worked very proactively with the Small Business Commission. But maybe -- I think Mark went to the most recent meeting and can give his input in regards to their feedback.

>> Good afternoon. Councilmember Pyle, you remember perhaps two weeks ago, we presented to the Community and Economic Development Committee a comprehensive summary of the supplier survey that we conducted over a period of one year. And all indications are that the local and small business community are relatively satisfied with our procurements. RFPs still need some work and that's going to be -- going to be the next thing we look at. Requests for quotes where there are online submissions very favorable. Very well-received. Requests for proposals, again, that's what we want to work on.

>> Scott Johnson: Mr. Mayor, can I add that we also have a pending item going forward in January to the Public Safety, finance and strategic support committee, of additional reforms that will make it easier we believe based on a number of procurement workouts that we've had with city staff and also the feedback from the city survey that we're proposing for the council to implement some changes to our Muni code to make it easier to do business with the city and to allow us to be more efficient in the process.

>> Mayor Reed: Any other questions or comments? I had one more question related to this probably not covered by this. But I know we've made a lot of effort over the last years to allow businesses to connect with us electronically, in the off hours, because small business people are busy in the daytime and they look for business in the evening. And we have a bid line and some other things that people can sign up for. That's a push system, is that still in place?

>> Scott Johnson: Yes, it is. We're looking for further enhancements to that to do further outreach to the business community.

>> Mayor Reed: The comments I received, it's very helpful to the small business person who wants to know what's going on in the city and is able to find out without having to be somehow connected into everything we do. Other questions or comments? Vice Mayor.

>> Councilmember Chirco: I think one of the most telling, not only would it add to the cost but it would have increased by six weeks per contract the time necessary. So if we're trying to do business at the speed of business, that's counterintuitive.

>> Mayor Reed: Anything else? I have no cards to speak on this. We have a recommendation to accept the analysis and make no change to the contracting authority.

>> Councilmember Chirco: I would move approval.

>> Councilmember Pyle: Second.

>> Mayor Reed: Motion is to approve the staff recommendations. All in favor, opposed, none opposed, okay, thank you, done with that item. Item 2, rules for the conduct of meetings. I have a memo that I sent out with the red line memo. I don't know why they're called red line, I guess when you look at them on electronic version they can be read with changes incorporating a series of things. And before we got it on

the council agenda I want the rules committee to have a chance to discuss it, see if there's anything we want to add or changes that need to be made. That's why we're looking at it --

>> Councilmember Chirco: I have one question before we start.

>> Mayor Reed: Vice mayor.

>> Councilmember Chirco: I was noticing that the biennial ethics is on the agenda for the 15th. It was originally scheduled for this week. Some of these items look like they're part of the biannual ethics.

>> Mayor Reed: Yes.

>> Councilmember Chirco: It feels like this would be better to come after we have the council discussion, so that this then could reflect the discussion by council, rather than have them come at the same meeting. Because this one is also due to come on the 15th.

>> Mayor Reed: I originally anticipated that we would have the biannual ethics review before we got to this, at the rules committee. But I did want to make sure the Rules Committee had a chance to look at it in draft form. And when we put it on the council agenda, it doesn't have to be next week. It could be January 12th would be fine. But I wanted to at least have a chance for everybody to see this before it got to the council.

>> Councilmember Chirco: And then any changes in the council conversation would be reflected before it would go to council?

>> Mayor Reed: Right.

>> Councilmember Chirco: Would it come back to rules with those --

>> Mayor Reed: It could, depending what kind of changes the council wanted to make. Just 4 for review.

>> Councilmember Chirco: I just want that clarification.

>> Mayor Reed: This would explain if the biennial ethics rules were approved, it would explain. Yes, Councilmember Nguyen.

>> Councilmember Nguyen: My understanding, you also formed biennial ethics ruining task force. Including (inaudible) correct?

>> Mayor Reed: Yes.

>> Councilmember Nguyen: Did these recommendations come out of the task force or have they had a chance to go over this and make their recommendations? I'm not really sure, what was the formation like and what was sort of the duties and responsibilities of the task force?

>> Mayor Reed: Well, it wasn't a task force. We only had one meeting, it was what did we call it? A forum, maybe. Now there was another term. We had a conversation to discuss I think there were probably 20 different that had been suggested to be reviewed as part of the biennial ethics review from a variety of sores. That's a meeting where we went through all of those items and discussed them. But that group, whatever it's called, did not consider the resumes for the conduct of meetings was part of what they considered. So this draft, you are the first to see this draft. But some of the issues that went through that discussion that are in the biennial ethics review will affect the rules for conduct of meetings. That's why those changes are reflected here. But the group did not sit down and look at this and try to figure out how to make the recommendations work. They were just making comments on the policy questions that were raised by the 20 different items. So this committee is the first group to see how you implement language.

>> Councilmember Nguyen: I see.

>> Councilmember Pyle: So we could recommend this for January 12th?

>> Mayor Reed: Sure. It could go on the January 12th meeting agenda. With any changes that council wants to make on the 15th on a couple of the items. So really, the question for today, are any of these proposed changes too confusing, or otherwise in terms of the drafting and how we deal with it and maybe some of them need to be subject to the council discussion first. But I wanted to get them out in public.

>> Councilmember Chirco: Well on page 14, it changes -- under orders of the day, it talks about changing the one two three 4th line down, approved by majority was the old language and the recommended new language is a two third vote. And I didn't understand the necessity of changing it from a market to a two-third or -- what was the criteria for recommending the suggestion.

>> Mayor Reed: That adding something at the orders -- adding something to the agenda, this two-thirds rule I believe comes out of Brown Act. So that if it hasn't been agendaized, you've got your 72-hour rule Brown Act then if you want to go beyond that, then you have to have two-thirds vote. So I'll let Lisa explain that.

>> Lisa Herrick: Mr. Mayor, members of the committee, in going through this we realized there was inconsistency between the rules resolution and the Brown Act, and so we just suggested that modification

>> Councilmember Chirco: Thank you, that was helpful.

>> Councilmember Nguyen: Mr. Mayor, I have another question. So what are we charged with today? Are we just looking at these topics and then we're going to discuss this at next week's council meeting or --

>> Mayor Reed: Yes, the substantive discussion about substantive changes should be part of the council meeting agenda. Today was giving you a chance to look at the draft text.

>> Councilmember Nguyen: Okay.

>> Mayor Reed: And many of these changes in here have nothing to do with the biennial ethics review. They're incorporating things that we have been doing, like the whole section on 6.5, the additional rules of procedure, all come out of our sunshine and open government reforms that we've already been implementing. But we needed to get them into these rules for conduct of meeting. So there's like four or five pages that try to incorporate all of the sunshine reforms.

>> Councilmember Chirco: I noticed that was like a whole new, almost, not completely but mostly a whole new section.

>> Mayor Reed: Right, and we've had a lot of sunshine reforms, we've been doing it for a long time and this is part of getting them into a policy or an ordinance.

>> Councilmember Chirco: I know on page 14, this appears to be part of the biannual, the orders of the day, requests about items on the agenda. So that one might be more reflective on the biannual.

>> Mayor Reed: That is included in the biannual ethics review. That's still subject to council decision.

>> Councilmember Chirco: Okay, uh-huh. No, those are the questions I had.

>> City Attorney Doyle: Mr. Mayor, on that section, under orders of the day, I think it might be best if we also reference to Brown Act on that two-thirds. Because it's not a mere vote of two-thirds, it's a finding there's two provisions in the Brown Act, one for emergency one for urgency. You have to find that the need has arisen since the posting of the agenda and there's immediate need to take action now. I might suggest that we add not just two-thirds vote but also in compliance with the Brown Act to this.

>> Mayor Reed: That would be good. Because otherwise, we're trying to figure out, why did we have that rule?

>> City Attorney Doyle: There is the provision that you can do it on a two-thirds vote.

>> Mayor Reed: The findings, Brown Act findings.

>> Councilmember Chirco: I like that.

>> Mayor Reed: So you'll give us some language on that, Rick, when we get to final consideration. The other alternative for us is to bring this back to the Rules Committee on --

>> Lee Price: January 5th.

>> Mayor Reed: January 6th is the rules committee meeting after the holidays. We can do that too, we're not up against any deadline on this.

>> Councilmember Chirco: I like that because then the council has a chance for a full discussion, and if there's anything that does affect this, that can be incorporated into this.

>> Councilmember Pyle: Clarification.

>> Mayor Reed: Nancy.

>> Councilmember Pyle: So this will be distributed to the council prior to the 6th?

>> Lee Price: We have distributed it.

>> Councilmember Pyle: It has been distributed?

>> Lee Price: I apologize. Just in the Rules packet but we can distribute it ahead of the next Rules Committee meeting. We will be releasing the agenda packet for January 6th, 2010 on December 23rd.

>> Councilmember Pyle: And everybody will absolutely take care of this over the holidays.

>> Lee Price: We know that you will. We know you're so hardworking that's what you'll be doing with your time off.

>> Mayor Reed: We'll be looking for things to do after all that time off.

>> Councilmember Chirco: So what I would do is defer that to the -- what was the date?

>> Mayor Reed: January 6th.

>> Lee Price: January 6th. That would be my motion.

>> Mayor Reed: I do have a request to speak on this. We'll take the public testimony now. Bob Brownstein.

>> Bob Brownstein: There are some aspects of these rules that do overlap with the biennial ethics report. I think it makes sense to get the full public testimony as well as full council deliberation before this goes to rules. There are also some parts of this that are on the same topic of the biennial ethics proposals but seem to have different language that suggests different intent which is hard to follow. Like the biennial ethics language suggests that we don't want to have any motions heard under orders of the day that would take something off the agenda. That would only happen the normal time that an item is heard. And yet, this language suggests if the council is unanimous you could hear something under orders of the day that would take something off the council agenda even though people who would be coming to hear that item wouldn't know that this was going to happen and would miss it. And then this also explicitly says citizens will not have right to speak under those circumstances when you do hear it under orders of the day. I would strongly suggest as a default policy for the city council to demonstrate its commitment to free speech and public participation, that you simply have in your rules that any time a motion is made by a councilmember, seconded by another councilmember, and being debated, you will accept public testimony. That does go beyond the Brown Act. So does most of our sunshine policy. But it says basically, we have nothing to fear, from letting the public speak. And if they say something dumb, councilmembers have every opportunity to notice that, argue back, vote it down, but at least, people in all cases will have a chance to put their two minutes or one minute, however much time they get, into the process. So I think we would get a lot by having that default so that no matter how we word the orders of the day kind of thing, we would always know that free speech is paramount in San José. Thank you.

>> Mayor Reed: I think that's it. Public testimony on that. Any other questions or referrals to staff for clarification or anything before -- okay, so the motion is to defer this to January 6th, to the Rules Committee meeting. All in favor? Opposed? None opposed? That's what we'll do.

>> Councilmember Pyle: And the biennial ethics item is next week, that's a begin.

>> Mayor Reed: Our next item is on new technologies. This is a previous referral to staff they're bringing back to us on two items, a disclosure of communications. And then what to do about communications regarding city business that were sent or received on personal devices. Which includes all kinds of new technologies that weren't invented when the Brown Act or even when the sunshine task force committee began its work. So staff.

>> Tom Manheim: And arguably, technology is yet to be developed, the way it's written. So this proposal before you, we believe, is in fact responsive to the conversation that we heard on October 7th, when we were last before you. There are essentially two parts to the proposal. The first was, you'll recall we had a discussion about what might happen during council meetings in terms of communication and expanding the disclosure of a policy that you already have to include communications that might occur over any of these new technology devices. Under the proposal, or the option before you, the city council would impose that requirement on itself to disclose during a council meeting communication that is received and read, so we wanted to make it clear that we weren't -- there may be communication received, but unless it's really been read by the person there can't be an obligation to disclose it. Any communication that is relevant to an item before the council, and this would reply to essentially communications from two groups of people. There will be parties to an administrative hearing or anyone who had a financially interest in the outcome of the item that was before the council. And the communication -- the committee could consider whether it wanted to limit that communication to direct communication or indirect communication which you know, might come to a councilmember during the meeting through a third party. So that is the disclosure material facts proposal. The second part of this is really getting at the new technologies in general and how the public -- the City's public records policy would apply to these new technologies. So this would extend the city's public communications policy, to extend to devices that are not owned by the city. And all -- just clarify a couple of things. As we've looked at this we've been trying to sort out how large a problem this could conceivably create in terms of records retention and trying to extract the information from these devices so that it could be in fact preserved. This would not change any requirements regarding what records must be retained. So let me qualify that. But by stepping the City's public records policy to these new devices, it would at times trigger retention obligations. We think those times would be relatively limited. The city's definition -- there are legislative requirements with regard to records retention, but we don't think with regard to this policy that it would apply very often in terms of extending it to these new devices. In fact, the primary definition I think we would want to look at when thinking about communications on the new technologies is the City's own definition of what a record is. And I'll just read that to you. It is the city's record retention policy defines record as a recorded information that is purposely retained in the normal course of business. So in essence, what we're same

is if I as the -- like I have a 15 that I get communications on, it is my personal device. It is mine to determine when I look at this whether or not a communication on it is something that I need to retain for my ability to do my work. That determination is mine alone. Once I make that determination, then the records-retention policy would trigger. I would have to look at there and say well, if it's a record of this type the records retention policy says it needs to be kept for a certain amount of time. If it's that type, then it would be a different period of time. So it's-d we do think there will be occasional times when the records retention policy will be affected. We don't think it will be a large issue. Where this will become more interesting is when we do get a public records act request for all communications including communications on new technologies. It would then be my obligation to look at my phone, and determine what communications, what information was on here, and whether or not that was a record. And then, if it was a record, whether or not that record was responsive to the requests that had been made through the public records act request. I would just note that one of the things that we noted in looking at this policy is that it will be an honor system. There is -- the city does not have a mechanism to compel somebody to do this. We can set policies and people can be subject to discipline, but we don't have the ability to actually go take their phone and look at what's on it. So it would necessarily I think require on -- or rely on the honor system. The last thing that would be before the committee that you would need to consider is who you would want this to apply to. It could apply as you look down this list it really is just an expanding list. It could be at its narrowest the mayor and council or mayor and council and staff. Next you could add in appointees, you could add in staff, you could capture all of those groups that we talked about just a second ago plus all the following ones, the members of the plannings, hearing board or civil service commission, assistants and deputies of the City Manager, assistants to the agency and assistants to the joint powers authority with that we're here to clarify to the extent we can or take further direction.

>> Mayor Reed: My first question is, I've heard Rick explain this before but I can't quite bring it back. Why are not communications on personal devices already covered by the public records act?

>> City Attorney Doyle: Because they're not in the custody of the city so the city does not have custody or control of the documents. So our view of is that, on the public records act it's not -- it's not a city document, not a public document. And there's a superior court case that takes that position as well.

>> Mayor Reed: Is the staff position to say that just because it's on a personal device, doesn't mean it's a public record and we should treat those devices as if they are owned by the city? I mean it seems that's effectively what you are doing.

>> Lisa Herrick: Well, actually I think we understood that to be the committee's direction.

>> Mayor Reed: So I thought so.

>> Lisa Herrick: So we just tried to craft something that would be one document.

>> Tom Manheim: The ability to go in and get the information itself if it's a personal device, we don't assume that we could take that device from somebody and look at it themselves.

>> Mayor Reed: And we know that was a case with a police officer out of southern California, or that was an issue.

>> City Attorney Doyle: Right, that was documents that city issued, hand held, and pursuant to subpoena, and the Ninth Circuit Court of Appeals said that was inappropriate.

>> Mayor Reed: However if I have some communications on my phone, let's say I saved a bunch of text messages or something and we got a public reports act request, if I my do with a file because a lot of files, well in fact I don't go through the files and figure out what's a public report and San José like that. Here's the file you determine that. As well as we for some period of time.

>> Tom Manheim: We could. And the other mechanism for doing that, there are some devices that would allow you to forward your text messages, for instance, to an e-mail, and then we can capture it through the city's e-mail system. The challenge we have is that it's device-dependent and carrier-dependent so we don't know, it would be a case-by-case look at whether you could do it by literally, you'd literally have to take the device to get the information.

>> Mayor Reed: And the carriers change monthly, it seems.

>> Tom Manheim: Yes, and I could just ad, when we started looking at this, my phone was not capable of forwarding text messages. It now is.

>> Mayor Reed: Would it be farther of if records, or change the provisions whatever those are ?

>> Lisa Herrick: We suggested making changes to a couple of different policies. The first is, the material facts policy, this is obviously different, so it would require sort of an overhaul to the material facts policy, but because it was in the nature of a disclosure policy, it seems like that was a good place to put it. And then the other suggestion was, as it relates to public records, to amend our public records policy, there's

both a council and administrative policy for public records, and the protocol used to producing those records.

>> Mayor Reed: So in order to explain this to councilmembers and staff, because it could cover a lot of people. We haven't talked about the scope of this, it would be you can keep using your cell phone or smart phone or whatever it is, the same way you're using it now. The one difference could be, if the public records act comes in, you're going to have to look at it and make a determination if anything's covered.

>> City Attorney Doyle: I think the way to broach it is, you shouldn't have an expectation of privacy in that personal device if it's related to -- if it's something related to the city's business, I think this is how we discussed it last time. If I can also comment on the one thing I think it's important for the committee and the council alternate to understand, in looking at the material facts, disclosure of material facts policy, what that suggests to me is that the disclosure of the communications, the content of the communications would have to be disclosed. Right now you have different disclosures and so as you are aware, when you disclose meetings with lobbyists or principals, you disclose the fact that you met with them, but you don't necessarily disclose the content of those meetings. This would suggest, you know, you received a communication you would have to disclose the content of that information or another leaves say it's available for review.

>> Mayor Reed: Let's go back to that, that was the first conversation on disclosure. We started out this conversation with disclosing communications received during a council meeting. This language is broader than that, so I am everywhere communication that they might have received, and then, make sure its somehow got disclosed. That I think is much more of a burden than are going to want and is really necessary. So I would suggest that on that one, that we just limit this down to communications received during a council meeting. That's where the conversation started. We already have obligations to disclose things. We have public records requirement and there's a whole lot of the communications above the meeting. And I think we would solve the issue if we just limit this to during council meetings.

>> Tom Manheim: That's easily done. I don't think it was our intent to expand this when we wrote it so-

>> Mayor Reed: Any other questions? Councilmember Nguyen?

>> Councilmember Nguyen: Let me just follow up on that question quickly. So if we receive communication during the council meeting, I assume that we need to disclose it during that council meeting, and not after?

>> Tom Manheim: That's the intention, yes.

>> Councilmember Nguyen: Any chance we get, correct?

>> Tom Manheim: Yes.

>> Councilmember Nguyen: If we were to implement these changes, are we also looking at extending the time allocated for us to obtain these public records act requests? Because obviously -- I don't know what the time frame right now, when we receive an e-mail requesting public records, I think it's usually two or three weeks?

>> Lee Price: Ten days.

>> Tom Manheim: Ten days.

>> Councilmember Nguyen: If we go back account we would need a little bit more time than ten days.

>> Tom Manheim: If we do have the ability to do that, we will have, the obligation, while there are the city has imposed a time report are where people should within ten days or we would need to request additional time of the person, let them know that we need the additional time to get the records they're asking for.

>> Councilmember Nguyen: Uh-huh. And then -- I'm sorry Judy.

>> Councilmember Chirco: No, go ahead.

>> Councilmember Nguyen: Just one more question. In a scenario where I received one particular item and that item on my blackberry but I even deleted it. Even without an acknowledgment, what would happen in something like that?

>> Tom Manheim: I would let Lisa answer that question. First would be to make sure you looked at that particular communication you received on your blackberry, that you intentionally needed to hold on to, if you didn't need to hold onto it, then it's not a record under the city's record policy, and so there to turn it over.

>> City Attorney Doyle: I think the simple way to look at it is, if you get a piece of paper and you throw it in the garbage, same as deleting it, you never intended to keep it. To the extent it is no longer a report, or nonexistence, not there. I don't know the technology of getting able to -- that certainly raises a whole

can of worms and we're not necessarily going there. This is an intention to go past the public records act but something that's doable.

>> Mayor Reed: One of the issues for me is I get probably between 50 to 100 e-mail messages a day, on my personal e-mail account. Most of it's garbage. I don't want to create an obligation where I've got to save all of that just in case a request comes in two months from now. And so, but the same thing is true with other communications. The Spam that I get gets deleted and it's gone. I have no obligation to save it even though it came in on the City Hall e-mail account. It's just gone. So we wouldn't be changing that. So back to my simple explanation. You can keep using your device exactly as you're doing now, except when there's a public records act request, you would have an obligation to check your device and see if there was something that was responsive to the public records act request.

>> Tom Manheim: That's correct.

>> Councilmember Nguyen: Thank you.

>> Tom Manheim: And I apologize if the memo was less than clear. I think you've described it exactly right. There is no additional obligation to retain something simply because we're extending the public records act to this.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: All right. I'm really struggling with this because I think the whole thing is premature. Number 1, it's legal for the city to request of any of the councilmembers the content of what's in their personal cell phones. Isn't that correct?

>> City Attorney Doyle: I think based on a 9th circuit case, I don't know that I'd say it's illegal, the city would certainly not excel it.

>> Councilmember Pyle: It's not compulsory. So more -- it seems like more would be expected that be is expected now. So it would be more of an obligation. It is an honor system only and I see it as a colossal time waster since you've got the greatest documents since the emancipation proclamation. It's concerned about are we trying to find a solution to fit this rule or a question to fix this answer? So that's what I'm struggling with.

>> City Attorney Doyle: Yeah, I think staff was really trying to come back with a committee direct that where there may be documents in personal computers or hand-helds that city officials shouldn't have any expectation or privacy, that's a private document. We were responding to the committee apples to come back with a proposal.

>> Councilmember Pyle: Well, mayor, my e-mail sounds just about the same as yours, pretty uninteresting.

>>> There are a lot of snow flakes on the ground, I also thank, if it is something that is of interest to the city and as long as it's not an expense generating item, I think calling it out as something that's expected is not inappropriate. But I do think on number 1, disclosures by the mayor for any communication received or read. But when we do disclosures now, if we had meetings with the principal or a lobbyist. And this one seems to call out anyone who has a financial interest in the decision, and that could well be 100 or 150 property owners. So it just seems that we should use that language we use when we close our meetings with a principal or a lobbyist, as -- when we talk about communication.

>> Lisa Herrick: Just this particular description of what would be relevant, quote-unquote, came from -- was modeled from a section in the political reform act that the mayor had suggested I think gets at one of our earlier committee meetings. And so there's certainly some revision that could be done to that. It was just a suggestion again of trying to further extend the intent of what we could get from the committee.

>> Mayor Reed: I would agree with you, Judy, if we weren't going to narrow this down to the communications received during the meeting. If we weren't going to narrow this down to the communications received during the meeting, that's if we were going to go back and cover everything, that is way too broad. But people who evidently had an interest in the you city on during the meetings so it's a relatively small number and something councilmembers can cope with, without having to worry about thousands of records.

>> Councilmember Chirco: So then on the second one, it gets to noncity owned devices. That's not speaking to percent just received during council meetings.

>> Mayor Reed: Message was received during council meetings. However they were received would be covered by this language, personal device or otherwise, or handwritten notes, I suppose, would be covered.

>> Councilmember Chirco: So if you were to receive, say, 50 e-mails from a community and you kept them as support or not support on an issue, would you have a responsibility if there was a public record acts request to disclose those?

>> Tom Manheim: I think under this you would. If you are consciously saying I want to hold onto these, and the we do anonymous, we believe that applies now.

>> Councilmember Chirco: Singers I don't text, it's just that I don't know, it is some that I think need to be discussion. So prevention prevention of problems, thank you.

>> Mayor Reed: We do have other, court cases and other cities, and some of this is in anticipation, to try to avoid those types of problems. Any other questions on this? I have one person to speak. Bob, you want to do it right now?

>> Bob Brownstein: As a former member of the sunshine task force, I think trying to find a way to deal with this technology is an effort that fits completely in synch with what the spirit of the Sunshine Task Force was. Taks force also tried to recommend things that were feasible. Some people may think we failed at that, but we did try and come up with things that were feasible, and it is certainly relevant to be doing what the committee is doing now, trying to figure out what is feasible. I'd just like to point one more thing that I think is important in terms of feasibility. That is, it may be helpful for members of the council to get technical assistance or training in terms of the management of these things. Because I have one. It does things when I don't tell it to, and it refuses to do things when I do tell it to. It is not ubiquitous to Blackberry. I've had prior brands, and they are equally independent of my intentions. Now, I'm sure that people of a younger generation have figured out how to get it to behave, but those of my generation probably could use some help, thank you.

>> Mayor Reed: Anything else? I think what I'd like to do is, the next step on this would be to put it into policy language or ordinance language, is that right?

>> City Attorney Doyle: Whether you want it in ordinance form or policy form, we can come back with either.

>> Mayor Reed: I'd like to see the final language come back here before we send it on to the council. That would allow us to think about how it works in implementation. One thing we didn't talk about was the scope of the personal devices down to and including city officials as opposed to just mayor and councilmembers. I would be in favor of bringing it all the way down to include city officials. So that would even pick up boards and commissions as well if you have got them outlined here. So that's consistent with other measures we have that go down that far in the organization.

>> Councilmember Chirco: Just a question about possibly doing a pilot and getting an evaluation after a year, so we have a sense of how this is going, when it's operational. I know that would probably be the next step after the ordinance or policy.

>> Mayor Reed: Would you like to be the Guinea pig?

>> I think I would like to be out of the office. I think I need the training.

>> Mayor Reed: So if we were going to do that, we'd probably make it the mayor and the council. That would be one way to do it. Why don't we leave that language on the tale when we come back and figure out how much people down the chain and how many people we want to do and we'll find out how much staff time it might take. Nancy.

>> Councilmember Pyle: Could we also have an option that if we choose to turn in our cell phone during the meeting, we're off the hook.

>>> Mayor Reed: It's not just the cell phone communications that are covered.

>> Councilmember Pyle Just park it somewhere, wherever you want me to park it, I guess an option.

>> Mayor Reed: Well, if you don't get any communications during the meeting, plus whatever happens in the public, then there's nothing to be coffers that way?

>> Mayor Reed: I'll refer this Mack back to staff. They can about go through. Let's move on to the next item on the agenda, thank you very much. Our legislative guiding principles, accept the guiding principles, priorities and advocacy issues for 2010. You might explain how this relates to what we did on this at the Tuesday council meeting.

>> Betsy Shotwell: Thank you, mayor. Members of the committee, Betsy Shotwell, director of Intergovernmental Relations. They all went through the committees and to the council agendas in the normal review of the minutes and that's what transpired yesterday.

>> Mayor Reed: And we had a question from a couple of councilmembers about specific legislation that would get handled under these principles and would get of come back at some point. I just wanted to make sure that we respond to the councilmembers.

>> Betsy Shotwell: Well, Councilmember Liccardo did raise the question with regards to inclusionary zoning and the rental piece. I was under the impression that the motion was made, regarding the minutes, as Councilmember Constant asked if he was including that in the motion. And I believe Councilmember Liccardo did not. It was approving the minutes, so --

>> Mayor Reed: Yes but what I want to make sure is, it's clear if we have those kinds of issues, how they get worked through the process.

>> Betsy Shotwell: Right. Well, as I indicated yesterday I did say of course that we would be reviewing the document today at Rules and if the Rules accepted the recommendation to have it go to council next Tuesday, is where there could also be -- items could also be added by the council. If they so desire. Oh, sorry.

>> Mayor Reed: Okay, any other questions or comments? You have more of a presentation than that, I think, so I'll let you do that.

>> Betsy Shotwell: Correct. Yes, as the guiding principles, we're going through the committees, staff at the same time was preparing the legislative priorities for next year. In large part, these are appropriation requests, proposals that we will submit to the delegation for possible inclusion. It's a little early to give you a crystal ball, interpretation of how that may play out, because we're still working on our current appropriation in Congress. They did a continuing resolution to December 18th, we'll perhaps know more by then. And then as these become surer I will definitely be bringing them back as I always do to council to keep you included in the process. But at the federal level, it's a little early to give you a black and white picture as to what will play out. And also, as certain messages are sent, and developed by the administration and the presidential's budget is released and -- president's budget is released and proposed federal budget and all . And that is what is before you, recommendation number 1 is related to that. And I lobbyist from Sacramento, Roxann Miller is here. It's a live document, subject to additions, changes and revenuesing. Of course, the recent Mayor's clean tech summit last Friday, there will be additional items that will be borne out of that as welcoming to the council early next year.

>> Mayor Reed: Questions or comments?

>> Councilmember Chirco: And we're going to fulfill all of these by the end of the year?

>> Mayor Reed: Which year? We're going to have to get them all done by the end of 2010. Start over. I just wanted to talk about our ability to respond quickly at the state and federal level and what I've seen is you know, Roxann who's here is paying very close attention to what's going on in Sacramento, you're able to bring it into Rules and really within a few days we can respond, not quite real time.

>> Betsy Shotwell: Thank you. Yes, with regards to recommendation number 2, this recommendation would allow us subject to your acceptance of the guiding principles that billion the foundation for our advocacy in Sacramento and Washington would allow our lobbyists to take action in Sacramento on measures that are very important and critical to the city, and with reporting back to the Rules Committee as to these actions that were stain. And this would not happen angle the City Manager's office and the mayor's office have confirmed this action. You see this a lot, particularly with the state legislature almost full time now year round. Particularly at the end of session, gut and amending of bills. There is not the Rules Committee opportunity but again, the decisions that would be discussed between the manager's office and the mayor's office, and it would be consistent with our legislative guiding principles.

>> Mayor Reed: So you're comfortable if these are approved, we'll be able to respond timely? I know Roxann is sometimes there at 2:00 in the morning. And things do happen. Which is why she's there watching us.

>> Roxann Miller: And I would hope you would always have your cell phones handy to receive those calls. If I may, Mr. Mayor, just to amplify what Betsy has just shared with you, increasingly because of the dynamics of the legislative process I would like to say we're becoming more open more transparent. It is actually less transparent at times. I think most recently the whole debate surrounding the outcome on the water package. It is not unusual now to have major decisions made behind closed doors. And they occur in parts and as the mayor says it can be in the middle of the night. So it is very important. Is that we have some flexibility as Betsy said, always with the caveat, the underlying principle that consistency with what you have already adopted, your standard, your priorities, your policy. But it is increasingly becoming a real need to be able to weigh in quickly, to respond quickly, if we're going to maximize our opportunity to influence. Thank you.

>> Mayor Reed: One of my Sacramento trips, I was there the day the state legislature was considering the prisons bill. The solution or the -- before the latest solution, before the solution before that on prisons. Anyway, they were considering this huge package, multibillion dollars of prison bills and I was

meeting with members of the legislature in the afternoon. And they said, and I'm not exaggerating, we're going to see the bill at 5:00 and we're going to vote on it at 6:00. So you have to be able to respond to them whether they happen.

>> Roxann Miller: And working with our legislative delegation, literally, talking to them individually, being able to get to our staff quickly so we can get our message on the floor and the debate takes place I think we all want to appreciate, we want to be there to fulfill our they did understand, at minimum, the impact, so hopefully, they can act accordingly.

>> City Attorney Doyle: Mr. Mayor, I haven't had a chance to talk to the manager's staff about this. But on that urgency, I would ask or include that you call the City Manager's office or the city attorney's office. Because card room issue and we had to coordinate with your office on a lot of this stuff. So you're right, a lot of this stuffer is last-minute and it's either you know the lawyers have to get involved because of the language in the bill or it's a policy issue out of the manager's office.

>> Roxann Miller: Actually the card room and that whole issue and a number of bills in that area, Mr. Mayor, ask very familiar with. It was critical, it is critical to have that kind of direction already, but latitude and flexibility so our outcome was preferred.

>> Mayor Reed: So we should add the City Attorney into the language with the City Manager in that one section, is that what you're suggesting, Rick? Judy.

>> Councilmember Chirco: I think this is a grit step forward. I remember Leslye talking in council one time and it was a piece of federal legislative and I think she said it was changing like hourly. And that's how rapidly we need to be aware of what's happening. So I'm glad this is coming forward and we're able to have our advocates in our lobby group speak for us. Thank you for bringing this forward.

>> Betsy Shotwell: Thank you.

>> Mayor Reed: Either comments or questions on this?

>> Move to approve.

>> Councilmember Chirco: Second.

>> Mayor Reed: Motion to approve as memorandum and that would include putting it on the city council agenda for the 15th. So we can get to work. Things are still happening.

>> Betsy Shotwell: Yes.

>> Mayor Reed: Further discussion on that? All in favor, opposed, none opposed, that's approved.

>> Betsy Shotwell: Thank you.

>> Councilmember Pyle: Very, very well done.

>> Mayor Reed: Before we finish the legislative update I would just like to comment on and see if Roxann has any or Betsy has any comments on the president's speech about the jobs bill, I haven't seen the whole speech but I've seen some of the materials they handy out. And there were some items in in that appeared to be specifically responding to some of the things that we have been advocating for that should have been done with the stimulus package that weren't. So I want to compliment our staff for staying on that and talking to the president's -- the White House and the vice president and everything because when I went to Washington that was the topic I was raising was the fact that a lot of the stimulus funding was not going to create permanent jobs. They're only as good as the federal government would write the check and it looks like they got the message so I want to thank our staff to continue to make sure they're paying attention to the needs of California and San José in particular.

>> Betsy Shotwell: Thank you. Mayor I'm going to be in a conference call with our federal lobbyist on Friday. It is to follow up on the president's message this weekly. As you're already aware of of course Congress has to approve this and there's already been well, a lot of discussion over the Internet the last 24 hours on this. But if we can find a way to fund it and if we can find a way to particularly focus, as I mentioned in my memo on those cities with the highest unemployment rates, that's my number one priority as far as that issue. So -- but we will be following up with Patten Boggs on that on Friday.

>> Roxann Miller: There is a keen knowledge that we will have to grow our way out of this recession in that regard a good example currently is the race to the top which is currently being debated in Sacramento, and assembly version, that that effort, certainly if we succeed and we do have a role there in maximizing the ability of stimulus dollars returned to California in the range of \$700 million. Every child should have an opportunity to achieve, and that's the focus and we will try to be competitive. But again, the legislature knows that we have to depend on capturing those federal stimulus dollars, as well as creating jobs.

>> Mayor Reed: Now that you mentioned that, let me share with you what Vice Mayor Chirco and I heard this morning from our school superintendents about race for the top. They believe they are being

asked to sign the memorandum of understanding before they know what the deal is. And they're very reluctant to sign on, and trust the State of California to come through with anything, until the legislature is actually said what's going to be in the bill or however it's going to be handled. So if you see resistance at the school superintendent level that's why, we heard that very clearly this morning from about 15 superintendents.

>> Roxann Miller: The regulations just released, the deadline for the state to file its application is the 19th of this month. You're right, it's backwards, inside out, it's nonsensical, let alone what's being asked of the major stakeholders.

>> Mayor Reed: Nancy.

>> Councilmember Pyle: Just wanted to clarify Mr. Mayor, on the message that you conveyed if you may, was to send more incentive dollars that would help us to attract companies that would provide jobs that would come up with a more sustainable long last being form of income. And is that pretty much what you think the state is --

>> Betsy Shotwell: Well, I know that's what the national microeconomies in tandem with the high unemployment rates. And find the jobs that last, not the short-term.

>> Councilmember Pyle: Right, thank you.

>> Mayor Reed: When I was in Washington last I was at the Brookings Institute which is where the president gave his speech. There were four mayors from four very different parts of the country. We didn't rehearse this in advance but the message from the mayors to the White House was, do not give us money just to put people to work. They were calling it PSEs or public sector employment. Spend money in a way that will free up the capital market so the private sector can create jobs that are long lasting because we'll take the money and we'll put people to work but only as long as you're willing to write the check. And we all had economies that really were dependent upon private sector growth and that was the important thing and I think that's reflected in the president's report which was dependent on anything else anything else? Thank you for the report. Turning now to the next item which is the monthly report of activities for our City Auditor.

>> Sharon Erickson: Good afternoon. You have before you the monthly report for the month of November, 2009. I just wanted to point out a few things. First up, we did undergo our peer review, and received a full compliance opinion letter that that will be presented to the Public Safety, finance and strategic support committee, on next Thursday, December 17th. Also wanted to point out that we met with students and staff at Stanford University, two of us that were Stanford alum, september 2010 paid fellowship at no cost to the city. So we were pleased with that. Upcoming items on scheduled for December 17th on the Public Safety, finance and strategic support committee meeting is a audit of pensionable earnings and time reporting. And then in January we have a series of items coming forward, the single audit management letter for June 30, 2009, the service efforts and accomplishments report our annual review of Team San José which was as of June 30, 2009. An audit of civilianization opportunities in the police department and a redevelopment agency D DA review. I also wanted to point out that we have initiated our audit of card room oversight and have been meeting with the division of gaming control and with the two card rooms. With that I'm happy to answer any questions.

>> Mayor Reed: I had one question regarding the annual review of Team San José. Remembering this right, we're not going to have outside auditors do that work instead of your office?

>> Sharon Erickson: Actually we just met with Team San José the other day and we are talking about potentially keeping that in my office. There may be an amendment to the agreement coming forward to that effect.

>> Mayor Reed: Okay. Anything else? Okay. Thank you very much for your report. We need a motion to accept.

>> Councilmember Pyle: Move to approve.

>> Councilmember Nguyen: Second.

>> Mayor Reed: Motion is to approve. All in favor, opposed, none that takes us down, since we have no committee changes at this point, for council committee agendas. Open government initiatives, we have one item remaining, I don't know if it's the only item remaining, but from the sunshine task force, a recommendation to revise some language from the independent police auditor, we have that before us and we'll take that up now.

>> Tom Manheim: I'll just tee this off very quickly. And then the acting independent police auditor will really explain the proposal before you. but just to refresh your memory. This proposal came from sunshine and the previous independent IPA had not raised any concerns about it. But in the intervening

time before it came to you, the acting IPA did ask for time to look at it. And did have some concerns, I would characterize them mainly, as sustainable way given the limited resources. And I think what we've come back with meets that goal and I'll turn it over to Shivaun to walk you through it.

>> Shivaun Nurre: Thank you. When I first saw the proposal in the sunshine reforms task force my concern was being able to prepare the report but also a concern of the confidentiality of the police officers and making sure that we could have a system whereby there would not be any identifiers associated with the report. So if you don't mind I'm just going to walk you through page 1 of the report.

>> Mayor Reed: Okay.

>> Shivaun Nurre: So the information shows complaints against officers, and it reflects only those complaints in which an actual officer name can be associated with the complaint. We do have some complainants who come in and say I want to complain an officer acted inappropriately but they can't identify an officer. If during the course of the investigation we can't determine the identity of that officer it's not going to show up here. We have lots of unknown officers but that's not interesting in terms of what the sunshine task force looking for. For instance if you look on page 1, officer 15. Let's call him officer Kevin. As you see officer Kevin had one complaint filed against him in 2004, three complaints in 2006 and one complaint in 2007. The next time we run this report and we anticipate doing it on an annual basis, officer Kevin who is number 15 here may or may not be officer 15 in our next iteration of the report. Two reasons. One is just to double-insurance for confidentiality, and two, it makes it easier for us to run the report.

>> Mayor Reed: Yeah, I think so.

>> Shivaun Nurre: Also at that time, 2004 complaints will drop off and we'll add 2009 reports. I just wanted to make sure that comes forth in the report. We wanted to mention that, I don't know if that is meaningful to you .

>> Mayor Reed: I think it's a nightmare to keep track of the officers across the numbers across the years. That is not what this is intended to track anyway.

>> Also, you see the discipline imposed is changed either through -- the mechanism is usually arbitration or civil service appeals so an officer might receive termination, but then it's later appealed and changed to a suspension. In those areas where there is a sustained allegation, you may see the discipline changed, let's see if I can find one here. So for instance, page 11, officer 228, initially received a 40 hour suspension. And that was reversed to 20 hours.

>> Mayor Reed: And if an arbitration or civil service commission hearing determines no discipline was appropriate, would it show that discipline imposed and then no discipline? Or something? Or would those people just drop off, as if no discipline had --

>> City Attorney Doyle: I think if you look at page 26 there's an example of that.

>> Mayor Reed: Oh, yes.

>> Tom Manheim: Officer 494.

>> Mayor Reed: 494. So we have a termination, that was the decision by the Chief, I presume.

>> Shivaun Nurre: correct.

>> Mayor Reed: Then reverse dismissal per arbitration decision, that's the choice the officers have arbitration or civil service. And then the 30-day suspension was negotiated, perhaps?

>> Shivaun Nurre: I'm assuming it was an arbitration decision, but without pulling the case I couldn't tell you specifically.

>> Mayor Reed: So it was a dismissal that was reversed.

>> Shivaun Nurre: And the 30 days suspension was suggested by the arbitrator oop no discipline would be imposed, we haven't had that fact pattern so I don't know how that would appear.

>> Mayor Reed: Okay. I just know that the chief is not the final authority on some of this discipline. The chief may think discipline is appropriate and the civil service commission or the arbitrator might disagree. And that's an important faculty. Now, maybe it's not because it heart ever happens that somebody's completely let off the hook. But I'd hate to lose that information, that sounds like you're going to pick it up, any action is taken for sure.

>> Shivaun Nurre: Usually any action, the runs that we do, any action that is reflected in the first column is the action that is imposed by the department. So even if there were subsequent decisions to remove that down to nothing we'd still have our first column here.

>> Mayor Reed: Okay. I think it's important because I know some people in some cities nationwide complain that officers complaints are made and officers aren't disciplined well, I think that's an important thing to know but if they're not disciplined because the arbitrator or the civil service commission says they

shouldn't be disciplined that's a very different issue than if the chief thinks they shouldn't be disciplined. The chief shouldn't be blamed if the arbitrator, you know at that kind of a policy level.

>> Shivaun Nurre: And if I may, mayor, the document only reflects complaints that come into our office and they don't reflect sustained rate and thus the discipline rate is greater, in department-initiated cases. So with a similar table you could see more columns with where discipline is filled in .

>> Mayor Reed: Are there questions on this point so far? Okay. You have more presentation?

>> Shivaun Nurre: No.

>> Mayor Reed: Okay, just the questions. I did have a couple of other questions, one of which you just mentioned, which is the department-initiated complaints. Which I just want to verify. My rough calculations, there's probably another 30% of matters that are department-initiated that just are not reflected hereby because that's not the purpose of the report. But in terms of magnitude of the number of department-initiated complaints vs. the citizen-initiated complaints. Department-initiated complaints is a number. It's not just a handful, it's quite a few. And you mentioned the sustained rate was quite a high number for department initiated complaints as well. This is important to us for the council to remember that this isn't the whole picture .

>> Shivaun Nurre: But this was if direction that was given to us by the task force.

>> Mayor Reed: Right. And there's always more data out there as we all know. One other thing, you get to the end of this, one of my very first questions were, well, how many are there over X number of years and there's ultimately no totals at the bottom of the report, I destiny, I'm look at 45 of 45.

>> Shivaun Nurre: The total complaints that are reflected in this table are 1,000 complaints. There are 1,000 complaints, they do not include the complaints in which an officer cannot be identified, they don't include cases in which the complainant affirmatively withdrew his or her complaint. Because in the complainant does that, affirmatively states that I no longer wish to pursue my complaint, the officer's name is also policy made against the department not against the individual officer they do not include inquiry case is, which are some people perceive them as complaints and others did not, and it was a point of contention which I didn't feel worth reflecting here. And it does not include citizen complaints which are noninvestigated plains. Basically what you see here are investigation complaints, we've Dane out all the matters that we deem are not really investigated complaints .

>> Mayor Reed: Well, let me tell you how as a policy maker I'm trying to use this report, and I think it would be useful for you to put footnotes in. Things that are not in this report, footnote one, two, three, four, five. Whoever picks it up, that would be important. And the other thing was just the aggregate statistics. So how many are there, how many had discipline, how many didn't. On average, how many per year, per officer, those kinds of things which are really hard to do, with this data format. But you can go through and count them. Because that ultimately I think helps me as a policy maker to say, okay, now I understand the picture a little better. This is important, and I think, looking through here, based on my review, as we have a handful of officers that have more than, on average, two complaints a year, I don't know if that's accurate but we sort of hand-counted them. And I think that's afternoon important fact if people are interested in, as one of the issues that people have said we need to be concerned about, is a small number of officers doing a lot of things that generate complaints. And that would lead me to believe this is a very small number of officers because most officers, I don't know if most officers don't have any complaints, I think they all get complaints. But there are not very many officers I think literally a half dozen that average over these few years more than two per year. And I don't know whether that's an appropriate conclusion to draw in this but that's the way I try to use the data to try to define a scope of of an issue that needs further investigation. And if you could total that information, I'm sure there are spreadsheet musicians that could tell you how to total this differently than I could.

>> Shivaun Nurre: Yes, I will call on one so --

>> Mayor Reed: I'm used to total numbers oop not necessarily going to have your memo with it because I'm assuming this report somehow is going to get posted and it will be a stand alone source of information for people. And if we can annotate it and put footnotes in it I think it would be helpful for people as they're trying to figure out what it means.

>> Shivaun Nurre: I haven't worked out with in Manheim how it's going to be done. But your comments are very about. .

>> Mayor Reed: Any additional comments? This will be an annual report looking back five years --

>> Shivaun Nurre: This is my anticipation.

>> Mayor Reed: That you would figure out how to do it on april annual basis.

>> Tom Manheim: What we'll do is circle back and figure out, there were a number of reporting and posting requirements that sunshine assigned to this, I need to go back and refresh my memory on how -- I believe the sunfng would be could that they would be posted and that it would be an annual report. Is that consistent with what you recall, Lisa? Not to put you on the spot.

>> Lisa Herrick: No, I'm happy to be on the spot. But I think the bulk of the recommendation is what was here. It did talk about having maintaining a report, so if you look at the beginning, I think it was anticipated to be annual. And that it would include the multiple complaints over a period of time. We've articulated it to be in a five-year period for other reasons. But that's my understanding of what the intent of the task force was.

>> Mayor Reed: Okay. The other thing that comes to mind as policy maker, when I'm trying to drive something from this report is well, now that I know what it is from San José, aggregate numbers, how does that compare with the city? It's hard to compare with the city since we have different handles ever things, and I don't know that that can be done easily, you can't take that data and eight compare it to another city because they have a different system. If there's something you could put in a foot note that would tell people how to look at other cities in a way that would be meaningful. Because I have looked at other statistician and I know there's occasionally studies that tries to compare oranges to oranges city to city. You can't go to a city's Website and ask how many citizen-generated complaints are there it might be helpful to point people in the right more difficult than you might think to compare to anybody else. Anybody else? Councilmember Nguyen.

>> Councilmember Nguyen: Just a quick question. I apologize if I missed this, or Shivaun if you explained it already. Some cases have disciplinary action next to them and some don't. It's classified as completed. What happened to those that don't have disciplinary action?

>> Shivaun Nurre: Only cages in which allegations were true, is approved to have occurred, only with the other cases that you see listed here, one assumes that the finding was something less than sustained, right? It was less than sustained, they couldn't prove it happened or didn't happen, the allegation was deemed to have been unfounded, that it did not occur, the allegation, the officers' actions were deemed to be warranted given the circumstances, which is an exonerate rated finding. That's why you see completed cases with no discipline associated because the finding was not sustained. Was not a sustained finding, excuse me.

>> Councilmember Nguyen: Thank you.

>> Mayor Reed: Couple more questions about how the whole system works. So if we go to page 2, number 32, we have a citizens complaint, status was completed, and there was a demotion, would the person making the complaint know that a demotion was the outcome?

>> Shivaun Nurre: Yobility, but I could ask Lieutenant Escovel. He could answer that question.

>> Councilmember Pyle: .

>> Mayor Reed: Some people say we never found out what happened. we made a complaint and we didn't find out what happened and I'm trying to figure out how they get that info.

>> My general information, based on our office only indicates that the case was closed and to the complainant by the internal affairs unit.

>> Mayor Reed: Okay.

>> Generally speaking is that once if it is a citizen initiated complaint and it is a sustained finding, for example in this case if it's a demotion, whatever the level of discipline is, the complaint or citizen will receive closing letter, the fact stating that the allegation was sustained, it did move that the allegation did occur. But it won't show the level of discipline, in this case a demotion or various reasons that protect the officer. So we don't list the actual discipline imposed in letters or correspondence to the citizen.

>> Mayor Reed: Are we allowed to show that discipline of any kind was it was sustained and then what? What's the expectation, it was sustained, then we took appropriate action, it was sustain and we had discipline or is there anything we can tell them about.

>> Usually we can say it was sustained and actions are being addressed against the officer or officers. But we don't specifically say discipline is being imposed. They have an opportunity to call. We do explain it often when they call in and explain the process but we don't explain the discipline is being imoadzed.

>> Mayor Reed: Is that a Pobar limits?

>> City Attorney Doyle: I think it would be appropriate action is being taken by the department but whether it's discipline or something else is going a little bit beyond. So I think, to let the person know and

it's not inconsistent with what the city does for complaints for use m completed and if it's sustained, it's sustained and then appropriate action has been taken.

>> Mayor Reed: Okay well that raises another question and another problem and that is, our inability to communicate with the public what the department's actually doing in the way of discipline. You got a long way, saying yes, discipline does get taxicab. Maybe it's a small percentage of the flaints but discipline does happen. We have another report, the citywide discipline report and on average, there are about 40 discipline cases a year that show up on those reports and about 40% of those are police officers. I think that report is very inadequate now because you cannot look at the report and see anything except a police officer got this kind of discipline. There's no way to look at that and say, well, what was the offense or the problem? Because that category is blank. And I think it's really important for us to be able to communicate to people, if an officer did something, and they were disciplined, that we're taking action. We don't have to identify the officer. Clearly, that's an issue but if we were saying, 15 complaints against police officers last year, and discipline was taken? I think that goes a way towards letting the Public Works know if we take this stuff seriously, discipline was imposed, we can't tell you who, what or why but we want you to know that action was taken. If we can change that report by saying no officer identification that would be helpful.

>> Shivaun Nurre: Just a couple of thoughts have come to mind as you have been talking. You had mentioned the department initiated investigations and you commented about there being a higher sustainment rate. We together with the police department began to present to the council a summary at the time the IPA comes out with the annual report. As this report is published the reason before you today, we should also sequence the rerelease of that report so that the person reviewing the materials has a more complete picture. Because in the department-initiated if you would look at the time of sustainment rate, it ranges from 60 to 85% it gives you a little bit of initiated by the department and what the outcome is and I believe in that report there was discipline also. So the two reports may need to go hand in hand so a person could have more information.

>> Mayor Reed: Well, I think that would be useful because it's really important to know there are other things going on and not just one category. And I don't know if that annual discipline report side wide, I'm assuming that it would pick up everything. Any reason an officer was discipline which would collect the ones that the IPA is looking at, as well as the department-initiated. Ultimately if someone got disciplined, it would fall into that citywide report without regard to how it got started. That report is out there with other departments and their discipline. I don't want people to assume wrongly, that the police officer is taking care of problems when they arise. There's just -

>> We need to go back and check with the department to make sure it is cast a wided in.

>> Mayor Reed: Do you know if Pobar preefntle us from doing accurate kinds of information?

>> City Attorney Doyle: The concern under state law is not to identify the officer or any specific officer. So in the cars where you have a specific complaint and you're disappointing to a complainant that the matter was sustained and appropriate action was taken. That's about all you can do because they know who the individual officer is. If you're talking about aggregate number you have a little bit more flexibility to say these types of cases or this, this case and here is the discipline imposed. The only thing of concern is you're not able to identify the officer. We'll work with staff on those aggregate numbers and see if there's ways to beef it up.

>> Mayor Reed: The last thing I have to say, either captain Kirby is here or the IPA, whether you have any comparative data at the rate in which citizen initiated complaints are sustained or not? I've heard about a mass yays study that was done in 2005 or 2006 or anything like that. I don't know if anybody has done any of this, but when I look at the bottom of this, how many we have, what's the sustained rates, make captain Kirby could talk about that what's available out there that we might want to point people to even though it's not exactly what we're doing in San José.

>> Yes, Gary Kirby, captain San José PD. Thank you for the question. I have two comments I'd like to make, first one I'll answer your question on. Comparison studies like you mentioned the Macias report is the structure in which the activity is assessed for a violation either department policy, procedure, the law, so forth and so on. And I think it would probably help us both collectively, the five or seven cities and come up with a list of questions as the San José police department defines a violation of this when received by a complaint. But San Diego, Phoenix, El Paso does not have the same criteria in questioning or determination of, yes, it moves into even receiving a complaint. That will help us further benchmark. That study has not been done yet. I'll give you an example, just this morning I got a newsletter or news record on San Francisco's problem of three years in arrears of complaints not being

even investigated or concluded and that whole department is at bay. For example if we were to benchmark ourselves against San Francisco we might find that we are so out of line with complaints and sustainment because they are three years in arrears with their vehicles and the completion rate for which they have maintained and who knows, we might find ourselves to be at best practice, hopefully. So that's what we're at right now.

>> Mayor Reed: Okay, I will confess I went to Honolulu, their Website, anyway, I'd like to go to Honolulu, but Honolulu is on the safest big city ahead of us. I was curious, what others were doing. Their stained rates is 10% plus or minus a few points depending on that. This on aggregate a few years, is 10 plus or minus us on the sustained rates of citizen complaints. I know Honolulu has a different system but I get curious and I got to go look.

>> Benchmarking on what each agency determines to be a complaint and what they categorize it and how they move it through their vefght investigative process.

>> Shivaun Nurre: It is subject to all the nuances in all the departments. I think there is a move in the community to standardize things we'd have to look city by city and probably annual report by annual report.

>> Mayor Reed: Yes, it's a lot of work I know but we as policy makers are really curious about this stuff. I'm not trying to give you more work I know there's an endless number of places you could look for data. But that's something that this report ought to point people to that there are lot of variances among cities, a lot of cities could be different because people will go look at other cities and we've certainly heard that that other places do it differently, that much we know, they do it differently. Other comments or questions on this? What do we need to do here today? Just say this is good enough for sunshine reform recommendation?

>> Tom Manheim: If this passes your muster and you support it we will begin preparing this to go back to the city council for its approval. And we may probable -- what I would suggest is that we time this, there are about three trailing items to go back to council, maybe we can package those up to go out early next year.

>> Councilmember Chirco: What I would like to do is approve the staff registers with the addition that the mayor outlined, you know, there's more meaning to the report. So that would be my motion.

>> Second.

>> Mayor Reed: Okay, have a motion to approve with the diss. Capital Kirby, do you have any other comment?

>> Just a comment, it is a very positive one on behalf of Chief Davis. I think we have worked very cooivel with the IPA and Tom Manheim as far as the Sunshine Reform Task Force and its purpose, we're in agreement with what's been drawn here on how to represent the data and what's been drawn here today. It had our input, we appreciate the opportunity to have the input. I think it went well.

>> Mayor Reed: City Attorney.

>> City Attorney Doyle: Yes, Mr. Mayor, I take it you want us to report back at the same time on the aggregate reports on discipline?

>> Mayor Reed: Yes,.

>> City Attorney Doyle: Yes.

>> Mayor Reed: So we can get some answer whether or not we can improve the quality of information we're putting out.

>> Tom Manheim: Did you want that report to come back to here to rules before we go to council or just take that straight to council?

>> Mayor Reed: I think once you've done that you could take it straight to council.

>> Councilmember Pyle: Yes, I would agree. Don't want to hear it twice.

>> Mayor Reed: Anything else?

>> Tom Manheim: The only thing I would add as long as we're acknowledging different people I did want to acknowledge that Karl Mitchell in the attorney's office has also been very involved in this so it's been a collective effort. Thank you.

>> Mayor Reed: Thank you all for doing that. We have a motion to approve with some modifications. All in favor, opposed, none opposed, let's do it, good, congratulations. We had one other Sunshine Reform Task Force item and that was have the City Attorney to begin to prepare an ordinance and policies in order to get all of the sunshine reform stuff before the council in one form or the other. Are we ready to do that?

>> Councilmember Pyle: Move to approve.

>> Mayor Reed: Even with a few trailing items.

>> Councilmember Chirco: Second with enthusiasm.

>> Mayor Reed: We can see the light at the end of the road on sunshine. Bright light at the end of the road here. We have a motion to approve, direct the City Attorney to do that. All in favor, opposed, let the record reflect, the City Attorney did not on.

>> Tom Manheim: We had hoped to get it to the meeting, we hadn't quite done that, we were hoping to get it to the January 6th, nongovernmental, we have been working with the nonprofit strategic engagement group and we think that's all going to be coming together in January so --

>> Mayor Reed: So let me add to that list to look at Team San José and how that fits into NGOs because we had a very interesting effort in getting records from Team San José and I can't recall how they might be affected by NGO work but the question will come up I'm sure when it comes back to us. Anything else? Okay, we have open forum. Mr. Wall, Mr. Trout.

>> David Wall: Good afternoon. I wanted to comment on a couple of issues.

>> Mayor Reed: Just a little closer to the microphone, not quite picking up. Dw there you go. First back to the brookings institution, you did very well, you did well as compared to the other mayors, and rks companies to come in here to help you grow. That is a markets issue that may or may not happen. what you should be asking for is funding for infrastructure projects, such as rebuilding the collection system, the sewage -- the sewer system, and the storm drain system, as well as the sewage treatment plant. And that dovetails into two ancillary issues. One, the city really has to come forward as far as funding, a separate funding mechanism for the reclaimed water project. Because it has exceeded its scope under the sewer service and use charge. Second account McCarthy ranch issue that you will be discussing tomorrow. If -- you're on record to support McCarthy in this development and that's fine. But that materially alters how that plant works. That plant was designed 50 years ago, and band-aided over the decades. To remedy the sludge drying aspects is only cost-effective as if you redo the entire plant, rebuilding at once, not to move that operation around. So please, think about that before you get Mr. McCarthy wishing to develop that prop. And focus on your trips to Washington which I think you're compensationly good at to get exceptionally good at. to get funding for the sewer system for all sections of the city .

>> Mayor Reed: Mr. Trout.

>> Mr. Mayor, members of the council and everybody.

>> Mayor Reed: Get a little closer to the microphone so we pick it up.

>> Mayor Davis in Vallejo, did you hear what he was saying? I was listening to KFAX Yesternight, and he said no homosexuals would go to heaven. A month ago we had a lesbian tell you she wanted you to help them in promoting that type of lifestyle, and you didn't say a thing. And I would have liked you to follow in the footsteps of this great mayor in Vallejo. And you also mentioned that you wanted the invocation to be ten minutes. And it's my suggestion that we just do away completely with praying. It's a farce, it's a disrep to God and out of respect for him let's forget that he exists because essentially that's what we're doing. It says he had a turns away his ear from hearing the law, his prayer is an abomination anyway. So let's just forget God and forget the invocation. I think that would be much more honoring to God to just forget him. Because we really have forgotten him. And you know the fact of the matter is that Jesus said, he didn't come to destroy the law of Moses but to fulfill it. And we can pretend to serve God, pretend to acknowledge God. But, you know, it's one thing to be saved and it's -- you know there are only two types of people, really, there's is chaff and there's the wheat. The chaff is everybody who is not reconciled to God through Jesus Christ.

>> Mayor Reed: That concludes the open forum. We are adjourned.