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>> Ed Rast: Let's everybody have a seat and go through some administrative announcements starting in just a minute. If you need your ticket validation, it's in the hallway. Be sure to pick up an agenda. Anybody who is here to speak, we would ask you to fill out a speakers card. You're not required, but we would ask that you do so. Turn off your cell phones, pagers, anything that would interfere with the audio system, and of course, the last one is make sure you pull the microphone up close to your mouth so everybody can hear you both in the room as well as on civic center television. All right, we're going to call to order the Sunshine Reform Task Force for Thursday, February 21st, the meeting is called to order. The first agenda item is approval of the December 6th and then later the December 31st minutes.

>> Bert Robinson: Are you looking for a motion?

>> Ed Rast: Yes.

>> Bert Robinson: Do you want to take them one at a time?

>> Ed Rast: One at a time.

>> Bert Robinson: I'll move approval for the meeting of December 6th.

>> Ed Rast: Second?

>> Virginia Holtz: Virginia Holtz, second.

>> Ed Rast: On the comments of the chair. We thanked Judy Nadler for her services to the task force.

>> Virginia Holtz: Are you asking for the minutes to be amended?

>> Ed Rast: That's correct. Any additional -- vote approval of the minutes, all in favor? [ayes]

>> Ed Rast: Opposed? Any abstentions? Minutes of January 31st, we need a motion.

>> Bert Robinson: Move approval.

>> I second.

>> Ed Rast: Comments, corrections?

>> One correction, I believe the -- under the public speakers, the first person was Walter Wilson, not Walker.

>> So noted.

>> Ed Rast: Additional comments? All in favor? [ayes]

>> Ed Rast: Opposed? Abstentions? Minutes passed. Comments from the chair. Keep it short. I think we're making great progress. The Rules Committee will review the phase 1 the first Wednesday in March. And that's about it. I think tonight we've got technology to start with, and so hopefully, we'll be able to finish that up and then we'll be just working on public records for a while. Review of the meeting materials, staff.

>> The technology document is six pages long. And you've seen most of it before. The new parts are on pages 4, under 6.2.3, (b) and (c). And on page 6, the retention schedules. And then with regard to the public records document, you received that e-mail from Bert suggesting that the last two documents are the most germane and the first three are only for the completist on the task force. [laughter]

>> Ed Rast: All right.

>> That concludes review of the meeting materials.

>> Ed Rast: Tom Manheim. I'm sorry, Dave, you want to say --

>> Dave Zenker: Dave Zenker. I was hoping that Dave would give us where you were in regard to your work plans.

>> Tom Manheim: I could introduce that. I was just going to update the task force on some scheduling changes that will affect you and depending on your point of view this is either good news or bad news. I can tell you that we will not be having a meeting on March 6th. The main item we had scheduled for that meeting was law enforcement records. The -- to answer your question, the subcommittee, you see the schedule on the left-hand column there. On the overhead, and I think the subcommittee chair Bert will agree with me, most of those will be fairly easily dealt with. However, law enforcement is a significant piece of work that continues. And so we've actually -- we're not going to be meeting on Monday -- the subcommittee will not be meeting on Monday, so we can see if we can advance that work, get it back to the subcommittee, so that it can get back to the task force. But for now, we would ask you to -- the good news is, you'll have Monday -- pardon me, Thursday, March 6th free. We should already have March 20th on your schedules. We would like you to add April 3rd. And we suspect that April 17th is a high likelihood. Our expectation is that April 17th, at the latest, hopefully, we would be finalizing all of the task force discussions and decisions. Then staff will go off, write all of that up, and we will then provide that back to you, and give you hopefully a substantial amount of time to review that carefully before the meeting -- carefully before the meeting, and have one more meeting where we are sure that we have accurately captured all of the decisions in phase 2. That would be sometime in June but we don't know yet. It depends on how the work flow goes.

>> Ed Rast: Questions, comments? Thank you, Tom. Item 4, Dan Pulcrano, technology subcommittee, final recommendations.

>> Dan Pulcrano: Thank you, Ed. Well, we -- at everyone knows, the majority of these recommendations have been presented and approved by the task force. A couple items were sent back to the subcommittee with some homework to do. So this is what we have presented as final recommendations. The changes, you'll see on page 4. If you go to page 4 of 6, of the memo in the packet, under interactive services, you'll see at a we're recommending that there be a standardized interface for contact to us, basically a form so that people can contact various departments and public officials. We identified 98 contact-us forms. I have a question, Lisa. Do we need to specify 98 in the ordinance, or should we just -- might that be better be deleted? Because this is ordinance language, right? Is this just recommendations?

>> Lisa Herrick: Lisa Herrick. I think we've discussed before. I think the task force as a whole agreed that the technology recommendations would go forward as recommendations rather than --

>> Dan Pulcrano: Recommendations.

>> Lisa Herrick: -- rather than proposed ordinance language.

>> Dan Pulcrano: We can leave it in or delete it, whatever the will of the commission is. We're recommending that the contact form, you know, have explanatory language, explaining to citizens that it may not get a response, that if it relates to a public -- to an agenda item, that it will be included in the packet that goes to the Rules Committee. Basically giving an automated way for citizens to express their opinions to the City Council. So it will at least go to the Rules Committee and that there will be a consistent disclosure of the city's Web policies with respect to policy and terms of use, which is fairly standard in the web community, just about any Website you go to these days will have a disclosure of what their privacy policy in terms of use are and that's what we're suggesting that the city do. And then finally, on the last page, which is page 6 of 6, in the middle of the page, 6.3.1.030, retention schedules we're recommending that the retention schedules for the various departments go before the open government committee and be reviewed. How long documents are kept and retained by the city and that those be reviewed at the open government commission, and at the City Council. Just as a comment on that, you know, in the past, retention schedules have been subject to limits of space of documents, banker's boxes, et cetera, rules of

retention are changing, with e-documents, information can be electronically stored indefinitely in many cases. So that may warrant the city from time to time reviewing the policies as storage space becomes cheaper, retaining more records indefinitely may become much more feasible and cost-effective to do. That's just a comment on that and supports the reason why it should be periodically reviewed. Does anybody have any questions about the -- these changes to the recommendations or the recommendations in general? Trixie.

>> Trixie Johnson: Yes. On the item where they're making a comment on something on a council agenda and it's going to go to Rules, people may assume that they can make it the day of the council meeting and somehow it will go to council. If it goes to Rules it won't be seen in time to get to them for the relevant council meeting. So there needs to be some better way of getting it to the council on a timely fashion if it deals with a council agenda item. I don't have a particular thing to fashion here but Lee, do you have a suggestion?

>> The Clerk: Thank you Trixie. And that's an excellent comment because we often receive communications from the public on the day of the council meeting. So we might just consider just stopping, stopping at including -- included in the public record. Because that, then, means becomes part of the public record of the council agenda that that communication was concerning, which is our current practice. So it's just a suggestion.

>> Trixie Johnson: That makes a lot more sense to me.

>> Dan Pulcrano: Does this -- this doesn't preclude that, does it? It mandates that it be included in the packet for the Rules Committee but doesn't preclude it being available beyond that.

>> The Clerk: Well, I think what's important to note is by mandating if you will, through these guidelines, that the communication go through the public record process of the Rules Committee packet, it may in fact be delaying getting that communication to council. Often as something submits something relating to an agenda item, it's usually very time-sensitive. So we want to make that distribution as soon as possible. That is currently our practice. That communication then becomes filed with the council agenda packet and the item that it was concerning. If a communication comes into the City Council, that relates to some future council agenda item, then our practice is to run it through the public record in the Rules Committee packet.

>> Ed Rast: Ken Podgorsek.

>> Ken Podgorsek: A lot of people are very ignorant about how government works and how meetings work and how information gets out to a variety of councilmembers. And I would imagine there's probably a lot of people that do make comments on the day of a council meeting because they can't make it -- they send it through appropriate channels. But are totally absolutely unfamiliar that there's actually no physical way to actually get that to all the councilmembers before a decision is made. And I'm wondering if there's a need, in these documents, to put a disclaimer that says items received less than -- or less than 72 hours prior to, something like less than 72 hours prior to a, whatever's practical, to a council meeting will be included in the public record but may not be distributed to the council due to physical constraints or whatever. Because at least that way, people will know, hey, if I want my word, if I want my point to get across, I better get my butt down there and take my two minutes to talk. Because I think a lot of people just don't understand what it takes to run a government from a practical physical standpoint.

>> Ed Rast: Tom Manheim.

>> Tom Manheim: If I could clarify, because I know that we work very hard. It does get distributed to the council.

>> Ken Podgorsek: It does.

>> Tom Manheim: In all cases.

>> Ken Podgorsek: Okay.

>> Tom Manheim: I think that's exactly the concern that the City Clerk is raising, that for any communication, if you think of sort of the process, Rules happens on Wednesday for a council meeting the following Tuesday. Anything that comes to the council for communication after that Rules Committee meeting is distributed directly to council.

>> Ken Podgorsek: Okay.

>> Tom Manheim: And it can happen as late as the morning of or even the late afternoon of. It gets distributed as soon as it comes down. The City Clerk has the concern that this language would slow us down, because it would first go to the Rules Committee before it went to council.

>> Dan Pulcrano: I don't believe that was the intent of the committee.

>> Tom Manheim: I'm sure it wasn't.

>> Dan Pulcrano: But perhaps we could -- it was also discussed having every single public comment be mandated to be included in the council packet to create a voluminous packet as well. This recommendation will likely increase the volume of comments. Because it will make it easy for people to respond via contact-us forms. Via the Rules Committee would be a more practical solution, in some cases. But if -- one way to say, and be made available to the council, as well. But it might be in electronic form as opposed to a -- via the packet.

>> The Clerk: Right. And we do get a lot of communication via e-mail, and it does become part of the record of the council meeting. And you know, we may share those electronically with the mayor and the council and the appropriate staff. But we will also print them out and incorporate them into the paper packet so that we've got a written record of the communication.

>> Dan Pulcrano: Yeah, the packet will get very big with this contact-us form.

>> The Clerk: Yeah, okay.

>> Dan Pulcrano: So you know, we'll be killing a lot more trees. So I'm hesitant to mandate that every single communication that comes through the contact-us form be included in the paper packet. If there's an electronic solution, I think that might be much more pragmatic.

>> Ed Rast: Ken Podgorsek.

>> Ken Podgorsek: Notwithstanding my earlier comments, if you're able, Lee, to get that information out,.

>> The Clerk: We are.

>> Ken Podgorsek: I think that's key to the government.

>> The Clerk: With the technology we have available now, in my office, I have -- if a letter comes in, if somebody just drops by one, you know, I have a copier, scanner with e-mail capability. I mean we can distribute it in light speed, truly. [laughter]

>> Ken Podgorsek: Cool.

>> Trixie Johnson: I would just say stop it with public records. That would be my recommendation.

>> Dan Pulcrano: I have some suggested wording that I think would suggest Lee's concerns as well as clean up a couple of language things here. We'll state that it will be included in the public record that goes to

the Rules Committee, and be made available to the City Council. And then that doesn't necessarily specify the manner in which it will be made available. But it will be made available.

>> Trixie Johnson: Excuse me. I don't think that does it. If it comes in after the Rules Committee that deals with that meeting, there's no reason for it to go in the record to the Rules Committee. If it comes in between that Wednesday and the following Tuesday, why would you send it to Rules, since it deals with the past meeting?

>> Tom Manheim: Could I just ask for some clarification of my assumption, the goal is to ensure that any communication that comes into the City gets distributed to the council in some form. And I guess what we're struggling with is trying to figure out whether it's important for you to designate that it goes to the Rules Committee, which is a subcommittee of the full council, or simply make clear that it must go into the public record, and depending on the timing, it will either go to Rules if that's the next opportunity, or directly to council if that's the next opportunity. The -- I think the concern is that the language that you're suggesting would require a duplication of effort. We would be giving it to an empire council at a meeting and we would be circle a week later to give it -- circling back a week later and giving it to the Rules Committee when it's been already heard by the council.

>> Dan Pulcrano: Given that a copy of a document is set at 20 cents, going to each council, 20 cents is at least a buck. We're talking about a lot of dollars. We want to be cost-conscious I think. One way to do it would be to allow the public to choose whether they want it included in the record, and this contact form could actually be one of the items on, it could be a click-button, a check-box that allows the public to specify if they want it included in the public record.

>> The Clerk: I think that's what the public is assuming. If they submit a communication on a council agenda item, they're assuming it will become a part of the public record and that is the practice.

>> Dan Pulcrano: In some cases, they may want to -- you know, it could be a tipster, whistle blower, it could be informallal, it could be a invitation to an event. There are all kinds of things that want to get to the councilmembers that may or may not be -- they assist that it be -- if it's relevant to speaking out on an agenda item yes, it's a public record and they should be able to specify that. Bob.

>> Bob Brownstein: Don't we want to specify that it will go to either the Rules Committee or the City Council meeting, whichever goes first?

>> Dan Pulcrano: We can do that. Go to the Rules Committee or the City Council. In a timely manner. [Off microphone comments]

>> Dan Pulcrano: So Bob's suggestion is if the document refers to a council agenda item it will be included in the public record, and be distributed at the City Council meeting or the Rules Committee, whichever comes first. Whichever comes next, I think would be whichever comes next. Dave.

>> Dave Zenker: Can I ask lee, if you got an e-mail e-mail sent to your office that asks you to forward it, how is that handled? Because it seems to me this should be handled exactly the same way.

>> The Clerk: Right. If an e-mail -- so Dave's question was, if we receive an e-mail and it's addressed to the mayor and the council, how do we distribute it? Electronically, we distribute it electronically to the mayor and City Council members, department heads and council appointees. We physically print one out so we have a copy of that record in the council agenda packet which we do maintain the original of that record, and we include any letters, perhaps, that might even be brought to the council meeting. May I submit this for the record, we'll include that as well.

>> Dave Zenker: So if it's regarding an agenda item that's coming up on rules next week, do you necessarily make a separate copy for the Rules agenda?

>> The Clerk: No. If it's already something on a council agenda, it goes straight to the mayor and council and straight to the council agenda packet.

>> Dave Zenker: It seems to me where we're getting a little bit confused here is this whole terminology about it going to Rules Committee first. Seems to me what we're asking for is an easier way for the public to e-mail the City Council. It's all it is. We already have a method by which the public e-mails the City Council. And how those are handled. We should be following the same method unless you want to change that method. But talking about how they're going to be distributed to the Rules first and then the City Council potentially later, depending on which time the meetings happen, I think we're just making it very complicated.

>> Dan Pulcrano: We don't even need to include that if it is a procedure. What we're trying to do is make it simpler for the public to communicate with the council by having forms --

>> Dave Zenker: Right.

>> Dan Pulcrano: And the person doesn't even have an e-mail.

>> Dave Zenker: We just need to establish a method for the City Council to handle it.

>> Dan Pulcrano: We can leave that out and leave it handled to staff.

>> Dave Zenker: Exactly.

>> Dan Pulcrano: Are you suggest we not include it and let them handle it according to the way they handle it?

>> Dave Zenker: According to their policy. They could change it in the future to make it even easier.

>> Dan Pulcrano: We would say it be included in the packet and leave it at that. Everybody okay with that?

>> Dave Zenker: Sure.

>> Dan Pulcrano: We'll just end that sentence with public record and take out that goes to Rules Committee subject to e-government policy, blah blah blah. Well, no, we should keep in the subject to.

>> The Clerk: Right.

>> Dan Pulcrano: We'll just take out, "that goes to the Rules Committee, subject to policy." And then two small things for clarity. We say, "the complaint should be made to that particular councilmember. I think we should probably change that to "directed," I think it's a little more precise, the complaint should be directed to that particular councilmember. And then the last sentence where it says form based e-mail to receive all comments, I think we should take out the word "all" because the person should have the option. In which case they may want to receive comments only related to a specific issue. And that implies the only choice option they have is to receive all comments. I think if we delete the word all, it will keep in the spirit of the Web. Any other thoughts or comments on this? If not, I'll propose it as a resolution that the language as modified be approved.

>> Tom Manheim: Excuse me, this wasn't a motion yet. I thought there would be a motion on the table and then some discussion. I did have one comment I wanted to make, if you're ready to actually move a specific proposal and vote on it.

>> Dan Pulcrano: Do I have a motion. And that motion is, that -- the motion is that the language as amended be approved. Is there a second?

>> I second.

>> Dan Pulcrano: Joan.

>> Ed Rast: Comments.

>> Tom Manheim: I thought that Ed seconded.

>> No, he was asking for a second.

>> Tom Manheim: Thank you, sorry.

>> Ed Rast: Tom.

>> Tom Manheim: Yeah, I do think this is actually a very good piece of work. And I would urge the task force to pass it. I did have two suggested modifications which I think -- one is a clarification, one would be a modification. On the new language, the retention schedule 6.3.1.030, one of the things that Dan, you didn't actually speak to, but it says the task force recommends that the city publish an index to city records. And we agree that that's a good idea. We've looked at the San Francisco model, and what they do in San Francisco is, they essentially have taken their retention records, and they have put those into a full index, so that all of the retention records from the various departments are in an index. So the clarification would be that the index essentially reflect the retention schedules, since that is in fact an index of records we've already created. And this is more I guess a modification, but on 6.3-- on page 5, under 6.3 subsection (b), where there is a list of documents to be posted online permanently, we did just a quick look at those. And I asked our new public records manager to look into this. And on number 2, for instance, that's the community development block grant, we do about 70 of those a year. The average number of pages is somewhere around 1200. So we're looking at just for that one item, 84,000 pages to be posted. Don't have a problem posting it. But the idea of keeping it forever is a bit of a concern. And we thought if, instead, that could be modified to be consistent with the retention records for these documents, so that we, again, in a sort of simplifying things and having everything be consistent, when we looked at our retention records, it told us how long things needed to be posted on line, how long they needed to be retained in any form, I would ask that the full task force consider an amendment along those lines.

>> Dan Pulcrano: I'd like to respond to had a. Because one, the language for index was intentional and in keeping with the San Francisco -- the spirit of San Francisco's ordinance, which provides the public with a clear index of documents, and specifies the retention schedule. So I'm very comfortable with the language as it is worded currently.

>> Tom Manheim: Could I ask some clarification?

>> Dan Pulcrano: Sure.

>> Tom Manheim: Are you saying that index is anything other than the information that is in the retention schedule?

>> Dan Pulcrano: It is a comprehensive index of documents that exist. It gives the public a way of knowing what records are being kept by the city.

>> Tom Manheim: So for clarification, as we look at that, that is what our retention schedules are, they are a comprehensive list of the documents available, that we retain. That is the way San Francisco is responding. So my clarification is simply to ask, are we talking about something other than what San Francisco is doing or are we talking about action that is consistent with San Francisco?

>> Dan Pulcrano: The spirit of it is consistent with San Francisco. I have not -- have I not looked at exactly what is included in San Francisco's public index. I think the fact that an index exists is good. I think that the staff should do as good a job as it possibly can to create a useful index of documents for the public's reference purposes. So you know, we're not specifying the method and manner in excruciating detail.

>> Tom Manheim: That's helpful, thank you.

>> Dan Pulcrano: As detail as you can make it. Not into unnecessary detail that you can make it or not so unnecessarily brief that you can't use it at all. That would be doing the public service, I believe. If you want we could micromanage it further but I'd rather not.

>> Ed Rast: Ken Podgorsek then Bob Brownstein.

>> Ken Podgorsek: Quick question. Is it your intention to actually put the entire grants for the community development block grants, all the text of the grants online, available?

>> Dan Pulcrano: You know, if they're public records why not make them available?

>> Ken Podgorsek: But it is available. But I mean, I'm not saying it shouldn't be available. Somebody wants to make a public records request for all the community development block grants or a particular one, they should get it. But what's the benefit of putting this comment at 84,000 page document online, every year? I mean I could understand putting the document, showing all the awards, a synopsis of the grant and who the granting -- grantee was. I can understand that and say if you want more detail go down to City Hall and be happy to pull all the detail you want. And I can see the advantage it being online or being readily available for someone to expel online. I'm wondering who is going to download an 84,000 page document?

>> Dan Pulcrano: What is submitted to the council for approval on the grants? Is there a packet or book that they get? You don't give them 84,000 pages, do you?

>> Tom Manheim: My guess is, not the full grant. My guess is, what's submitted to council is a staff report, with --

>> Dan Pulcrano: Yeah, I think what this specifies, once again -- we're not micromanaging the -- there's, if you're interpreting it as every grant application, it was not specified to that level of detail. It said approved grants. You know, I think it's important that there be transparency in the grant-making process that people know the grants, what was approved. But it does not specifically specify the grant applications. But it does say the approved grants. So I would say a meaningful level of detail, reasonable level of detail about the grant is appropriate. Whether every -- every supporting document in the application needs to be included, I don't think we're specifying that.

>> Tom Manheim: The -- my question was less about what -- I don't have any problem putting all this online. We will -- the way it's written is the way we'll interpret it. We would not interpret this as anything other than grants. And I really didn't want to get into revisiting the documents you've chosen. It was simply a request that rather than these be permanently stored online, that they be stored for a length of time consistent with the retention records, which is exactly what a retention record is a document that says how long things should be kept.

>> Dan Pulcrano: You know, I-d.

>> Tom Manheim: I don't expect to convince you Dan. I thought maybe the task force would entertain an amendment.

>> Dan Pulcrano: We're in 2008 right now. And I think the technology, practical concerns about indefinite storage of documents on archival material is outdated. I had dinner two nights ago with a guy who sucks down the entire Internet, 100 million pages in the space of three hours. And stores that information permanently. So there is -- and his comment was, the bandwidth is so cheap, and the storage costs are so cheap these days that there's no reason to not store anything permanently. And I think that the city needs to move in that direction. And I frankly don't see any technological or physical barriers to do so.

>> Ed Rast: Bob Brownstein.

>> Bob Brownstein: Since we have retention schedule, I'm not sure what public purpose is served by moving beyond the retention schedule to have things stored in perpetuity. Except for a handful of things which have sort of almost eternal interest. Of which, I don't think community development block grants do. I mean, I can consider, if people would always want to know what the city budget was for a certain year and keeping the city budget as long as you're technologically capable of keeping it, you know, make sense. I'm just not sure why the rest of these should get the permanent classification as opposed to a reasonable retention schedule. I mean, long after everybody's been dead and gone, what use is the list of salaries of people earning the highest-paid people?

>> Dan Pulcrano: The point is we don't know what will be interesting 50 or 100 years from now. Humanity might have a different way of looking back. And sometimes minute items can be interesting. The new theories about data, there is no reason to destroy data. The whole notion of a retention schedule in itself is obsolete, we're essentially destroying data. And now that we're moving to paperless record keeping, there's no reason to actually physically destroy or delete data from public view. So I don't see what the -- I just fail to see the concern and why -- if I were to make any changes to this, I don't think it's broad enough. I think we should be permanently storing a lot more data. But I think this is a good start. Please.

>> Feedback. Actually, a couple of points. One is that we're more involved in storing data for long periods of time than having storage space. You have to constantly be managing that data. To move it to other platforms. It requires more resources than you would think. You just don't stick it on computer. The second thing is if we have a lot of records around that we really don't use, we still, when we get a discovery request, for litigation or for public records request, we still have to dig through that stuff. And that's not easy. It takes a lot of resources. So there are some really good reasons for performing an analysis of the legal, the fiscal and the operational value of records, and once you determine that, then set the retention period and follow it. Finally, the last thing is, what may be the statement that what may be valuable or interesting, say, 100 years from now or 50 years from now, I'm also, besides a records manager I'm certified archivist. One thing archivists do, is we have determined a methodology for records appraisal. That is, for determining what is likely to be useful for historic research in the future. I can say that the block grant records as they stand, me may certainly be interested in the program, and how it operated some day. They may be interested in the statistics. But they will not be interested in the level of detail that is represented here. So that is my professional statement having done this about 25 years.

>> Ed Rast: Joan.

>> I'm going to go back to the retention schedules itself, the index possibly could add a second column and have a two-tiered column of retention, one on computer and one on paper. Some things that need not to be online in perpetuity could be for a year. With the cycle of a year that might be appropriate and yet still be available if somebody has an interest in following up on that later, just a suggest.

>> Dan Pulcrano: By the way, we went through a much longer list and evaluated. And these categories, where the items we thought that would be appropriate to do that, so there was some judgment by this committee as to what would be a public interest. The list of all that could possibly be stored is much, much longer. There was an effort to make it manageable, make some value judgments as you suggested. And I think this is a good minimum start. And obviously if it becomes impossible, it will go back to council and say, jeez, we can't manage this much data, it's creating a legal risk for us, whatever. I think this is a good pilot project and see if we can approve these recommendations and see if we can make them work. I think they're reasonable, practical, can be done at a very modest cost.

>> Ed Rast: Bob Brownstein.

>> Bob Brownstein: I'd like to propose an amendment that on page 5, the items listed under B, except for budget, items 2 through 11, be referred for records appraisal for the purpose of maintenance and archives. Essentially meaning that instead of keeping all of it permanently, we'll keep it in line with the retention policy, and somebody who is experienced in managing records, looking at them in an archive, will

determine if there is any reasonable likelihood that our descendants will be interested in the stuff and make an effort to make it available to indemnify.

>> Are you trying to make that as a motion?

>> Bob Brownstein: It was a motion. We now have an amendment and a second to the amendment on the floor.

>> Dan Pulcrano: Point of order. Does the amendment -- will the amendment be voted on separately? We vote on the amendment separately?

>> The Clerk: No, that was a formal amendment, so you vote on that first.

>> Dan Pulcrano: We vote on it separately. And that is to refer the retention schedule, the entire -- .

>> Bob Brownstein: From 2 to 11 would be retained according to our retention policy. And then once the -- it's been kept that length of time, it would go to -- it would be referred for evaluation for being contained in the city archives.

>> Dan Pulcrano: That's overruling the city's recommendation and the city's recommendation is that it be made a permanent part of the record of the City of San José. So if the task force votes in favor of this amendment, you'll be overruling the work of the committee which is recommending these items be retained. I can see some compromising on the CDBG block grants, that there is a case that that may not be the level of high public interest, although I think I've addressed that in my comments, the grants but not necessarily the grant applications are appropriate. And that would be, at least to my interpretation, complying with this requirement. But the technology subcommittee is recommending that a permanent archive of the business of the City of San José be maintained in full view of the public. So this amendment I believe would seriously compromise this and be basically a -- you know, an opportunity for data destruction and pulling items from public view which is no longer necessary. Retention schedules are relative to the paper age, and we can maintain this data.

>> Ed Rast: Trixie.

>> Trixie Johnson: One thing you said, Dan, that got me started looking at Bob's as a more reasonable approach, you looked at a long list of things and selected these. We didn't see that long list and there might be something on that long list that I think belonged here and things here I don't think belong. So I'm wondering if we're really micromanaging here, and that what if we really want to suggest, and I think Bob was getting there, it's just he's dealing with what's in front of him, is I do think clearly the budgets need to be there, every -- in perpetuity, I don't think anybody would question that. But I would think all other records, that the council authorize a program to evaluate away should be available online for the retention period, and what should be permanent archive. And permanent archives are available. It isn't like they've disappeared into the ether somewhere, they are available. And it's possible that the city could have a computer, a server, whatever, that is the archive server or something of that nature. I think we're trying to micromanage a problem here. I don't have a problem with the idea that some things need to really be permanent. I just think we're trying to make too many decisions here that we're really not qualified to make.

>> Dan Pulcrano: First off, could someone from staff help me on this? This has already been approved by the task force, right? This portion?

>> Tom Manheim: No. The -- I think my recollection is the task force chose not to actually vote on it, so they looked at it last time. But this is the only vote of the entire time --

>> Dan Pulcrano: The concept of approval?

>> Tom Manheim: Yes.

>> Dan Pulcrano: You know, the council has the ability to modify this list in the future. If it so desires, obviously the council is the full authority on this. I think that -- I think that the concept of a permanent archive of the business of the City of San José is a good idea and should be in public view. And if, by subsequent council action, there are adjustments to this, I think that's fine. But I think this is an excellent start. And I think we should, you know, give it a shot. And these items have been carefully considered, and likely there will be additions to this over time. And maybe a few deletions. But it's a good -- I think it's a very good start. And I think the argument can be made that these items are of interest to some people and let's give it a try.

>> Ed Rast: Let me, administratively, Bob had a motion, Trixie seconded it.

>> Ken Podgorsek: I need a clarification from the clerk. Is an affirmative on the vote, affirmative on the original motion and an affirmative on the amendment, accepting the original motion with the amendment or do you need to vote against the original motion and vote for the amendment?

>> The Clerk: The formal motion to amend the original motion takes priority. So you need to vote on the motion to amend. And then you can go back to the original motion.

>> Ken Podgorsek: Okay, thank you.

>> Dan Pulcrano: And this motion is to refer it in what manner?

>> Bob Brownstein: This motion is to refer all the items under B, except budgets. Once the -- well, this motion is to say that for everything besides budgets, the data will be held in accordance with the City's retention policy and then shall be referred to an evaluation, professional evaluation to determine whether or not it should be held in the city archives.

>> Dan Pulcrano: Doesn't say who's going to be doing that evaluation or what citizens' committee will be reviewing that evaluation.

>> Bob Brownstein: No.

>> Dan Pulcrano: Okay, I'll be voting no on this.

>> Bob Brownstein: I'm assuming that that's the professional --

>> Dan Pulcrano: I think this motion substantially weakens a lot of the hard work of the technology committee and I'm absolutely opposed to it. Brenda.

>> Ed Rast: I'm sorry, Brenda and then --

>> Brenda Otey: I have a question. Under section B, it kind of assumes that there's an unlimited capacity for holding data. Is that something that we currently have with the city now, or does -- is that -- and how much -- or is there future costs that are associated, that would be in -- in future costs required to maintain the data over time, since we're saving everything?

>> Dan Pulcrano: That's a good question, Brenda. The cost now of data storage are coming down all the time. Every year they get cheaper and cheaper. And I suspect in the future they're going to be so infinitesimal that they're going to be irrelevant.

>> Virginia Holtz: Not only the storage costs are coming down, but also there's costs involved in having staff maintain that. And so I'd like to hear a response from staff on that, as well.

>> Tom Manheim: I'm looking at Steve Turner, in terms of managing that storage, the cost of time involved?

>> Steve Turner, information technology department. I don't have all the costs on the is storage. They are coming down, that is true, but that's generally just for the hardware side. There's also processes, there are people that have to maintain it and a bunch of different elements that need to make an entire procedure work so that we keep it around. The costs are not negligible in my opinion and they could be significant. I'm not sure how much we're actually storing right now, but it's not a negligible cost.

>> Dan Pulcrano: Might it actually cost more to actually have someone watch and take data down? Because they would actually have to maintain schedules, expire stuff and make sure it comes down. So it's actually more work and more time than sometimes just leaving it up, right?

>> Actually, you can build retention schedules right into the software, such as the enterprise content management system that the city is looking at. So that what happens when those particular documents that are linked to the retention schedules are eligible for destruction, the report will come out and say, here are the things that can go. You can have some legal review to make sure there's no pending litigation, no surprise audit that is coming along, you can have a safeguard. But it can be done automatically.

>> Dan Pulcrano: Retention review which would cause more cost for the city, rather than setting retention schedule to not expire. It can stay up right?

>> It would not cost more to make those reviews. Because what's in process basically is the attorneys and the staff in the unit, they just take a look and say, are there any pending issues that are going to come around that's going to affect this and they just sign off on it. It's not a labor-intensive review.

>> Ed Rast: Dave Zenker.

>> Dave Zenker: Dave Zenker. Let me tell you the reasons I want to support the motion. We should be making motions for the ordinance language and this particular language in these recommendations based on what we know today, not what we think might be happening in the future. Certainly we know the trend about data storage and the fact that it's getting cheaper or cheaper. But there's not any way that any of us in this room can predict what data is going to look in the future, what the storage capabilities are going to be in the future. I think it's hazardous for anybody in city government to be making decisions today based on what we think the infrastructure is going to be in the future. So I think we need to be making decisions today on what we know, and that's what we know we have certain capacities, we know we have certain sizes of documents. And we have a certain retention schedule. And I think if we were to be running our budget, for example, based on what we think tomorrow might hold, we would be in a world of hurt. In fact that's probably some of the reasons we're in a world of hurt. I've got to start questioning this whole argument, we think in the future it's going to be so cheap to keep these things online and I really have to question that.

>> Ed Rast: Trixie.

>> Trixie Johnson: I think we hired a public records manager to make recommendations to the council on some of the very things we're talking about. And then they become an issue of public discussion. And there can be a larger discussion than just this committee's discussion at that point if that becomes an issue. Number 1, I haven't seen the full list of what all those records are and I might find things really interesting that you didn't find interesting and vice versa. So I just think we're micromanaging, I'll say it again, we're micromanaging, I would rather have Bob's, I would even go further and said that we refer the list of those items that should be posted online of the public records that should be posted online, for work by the public records manager and a recommendation to the council, and that would be a public discussion and the whole list could be available to the public to look at and we could argue about it in a larger environment about what should be saved. Bob's comes closer, at least it says look at these more carefully, not ad infinitum. I've used archives, sometimes very frustrating. Archives are extremely important but we're really trying to make judgments that we're not qualified to make at this point. And Dave is right, we really aren't sure.

>> Dan Pulcrano: By the way, none of these objections came up at the technology committee meeting.

>> Trixie Johnson: That's why we're here to discuss it.

>> I'm sorry, that's not true. Folks just end that conversation here.

>> Ed Rast: Mary Ann.

>> Mary Ann Ruiz: I hadn't really thought about permanent archives. I can see the need of that, public records in the future. You're right, we don't know yet today. So I have another idea, see if Dan's open to that. Is -- and Dan and the rest of the task force, is if we modify the language to say that the task force recommends that the following documents be posted on line, as capacity permits. That may include, we're kind of leaving it open that this is a direction we would like to go. I see some I agree should not be on this list. But we modify it so we see this is the direction we would see the task force going or the sunshine commission going in the future, even though we may not be here. Because I think that one of the things we need to do is provide some direction and vision. So that's another idea.

>> Dan Pulcrano: I'm okay with that and even though I disagree with Bob's motion, you know I don't really care. Because if the city posts it, the media will keep the permanent archive if the city can't afford to do so. The data is going to be in the public sector because there's no longer barriers on storage of data.

>> Ed Rast: Let me make comment. Everybody go to page 6 of 6, 3-- I'm sorry, 6.3.1030 retention schedules. As you go down through that the second sentence reads, Sunshine Reform Task Force also recommends changes to the retention schedule be reviewed at an open public meeting to both open government meeting of the City Council. One way of handling this would be, changes to the retention schedule and records to be permanently retained be reviewed. Therefore what you're doing is you're working on the concept that there will be changes to include potentially the retention schedule and the records to be retained. Therefore, the open government commission would be advisory to the City Council on what permanent records would be retained.

>> Dan Pulcrano: Outside parties will index and retain this data. Google already is, they maintain everything that the city puts on, and others do as well, doesn't matter. If the city wants to maintain it, other entities will retain it. Doesn't matter how the city votes.

>> Ed Rast: Any additional?

>> Virginia Holtz: That's an amendment.

>> Ed Rast: We have an amendment. Any additional discussion on the amendment? We'll vote on that and then go back and vote on the motion.

>> Tom Manheim: Time out.

>> Ed Rast: I'm sorry.

>> The Clerk: I heard Mary Ann's suggestion as a friendly amendment.

>> Mary Ann Ruiz: That was a friendly amendment.

>> The Clerk: The process of the records retention schedule and the professional evaluation for archival purposes, is that -- were you attempting to add a friendly amendment to that motion?

>> Mary Ann Ruiz: I was attempting --

>> The Clerk: Was that accepted by the motion-maker and second?

>> No.

>> I thought you were amending --

>> Ed Rast: The original motion.

>> Mary Ann Ruiz: I don't know if I can amend the first one.

>> Bob Brownstein: What I believe Mary Ann was doing was a substitute motion. A substitute amendment. So if this one fails, you want to --

>> Ed Rast: Then you should offer yours.

>> Mary Ann Ruiz: Okay.

>> Tom Manheim: That makes sense to everybody.

>> Bert Robinson: If this one fails, Mary Ann should offer hers because it sounds like an alternative to this.

>> Ed Rast: Why don't we read it again so we understand it.

>> Do you want me to read it Bob or do you want to?

>> Bob Brownstein: I'll restate it. Under 6.3.1.010 (b) the number 1 should be retained as drafted, numbers 2 through 11 should be retained in accordance with the retention schedule, and after that point, should be referred for professional evaluation to determine whether the data should be kept in the City's archives.

>> Ed Rast: Questions on it? All in favor of Bob's motion say aye. Opposed. I'm sorry, put your hands up.

>> The Clerk: We need hands to help us count in favor. [Counting]

>> Ed Rast: Okay, those that are opposed?

>> Tom Manheim: Motion carries.

>> Ed Rast: Motion fails.

>> Tom Manheim: Carries.

>> Ed Rast: I'm sorry, it carries.

>> Dan Pulcrano: Okay, so with that amendment, why don't we propose that the rest --

>> Ken Podgorsek: Mr. Chair, before we vote on the entire, I'd like to put another amendment on the table. I'd like to include the chair's suggested language in section 6.3.1.030, that the list of archived records be reviewed on -- be reviewed at an open and public meeting of both the open government commission and the City Council. So that we're not creating a list in perpetuity that would change or need to change as time goes on. In that review, I'd like to put in that, in that review of the open government commission and the City Council, this is a bizarre motion -- that [laughter]

>> You said it, Ken.

>> Ken Podgorsek: That they can also make those -- change those records to permanent archives. That the list would be reviewed at least on an annual basis. That if it becomes appropriate that other -- other than the city budget, other records be added to the permanent archive, that they can make that recommendation, the City Council can.

>> Dan Pulcrano: Ken, that's implied in any City Council motion. It's permitted. If we remain silent on that subject, that's consistent with what you're saying.

>> Ken Podgorsek: But the list is not. I'd like the list to be reviewed on an annual basis.

>> The Clerk: The list would be included in anything archived.

>> Dan Pulcrano: I think if we're silent on that your intent could be accommodated.

>> Ken Podgorsek: I withdraw my amendment.

>> Ed Rast: Any further come? Mary Ann, do you have a comment on this?

>> Mary Ann Ruiz: No.

>> Dan Pulcrano: Okay.

>> Ed Rast: We're all set to vote.

>> Dan Pulcrano: On the main motion.

>> The Clerk: And the main motion is to approve the technology guidelines as amended.

>> Dan Pulcrano: And as amended and with the language modifications we read earlier.

>> Ed Rast: All in favor? [ayes]

>> Ed Rast: Opposed? Abstentions? The motion passes.

>> Dan Pulcrano: Thank you very much.

>> Ed Rast: I'd like to thank the technology committee and Lisa in assisting this process. It was a long process.

>> Dan Pulcrano: I'd like to add my thanks to Lisa. Lisa took a long series and put them together in a way that was understandable. I'd like to thank you.

>> Ed Rast: And Dottie.

>> Tom Manheim: And congratulations, that's another subcommittee that just finished its work.

>> Ed Rast: Thank you very much. [applause]

>> Tom Manheim: Pressure is on, Bert.

>> Bert Robinson: If any other subcommittees would like something to do, we have some stuff. [laughter]

>> Ed Rast: And the next agenda item is public records subcommittee recommendations, Bert Robinson.

>> Bert Robinson: Here we go again. By the standards of the public records subcommittee, I think this is a relatively simple issue or pair of issues that we're bringing to you this evening. What I'd like to do, I think the easiest way for us to discuss these and vote on them is going to be in two pieces, to talk about the litigation issue, and then to talk about the personnel issue. But I wanted to give a few overview comments here, that sort of knit these two things together, that will help explain why they're coming to you together. In the public records act there are two fairly broad exemptions, one having to do with litigation, and one having to do with personnel. And they're reproduced for you, so you don't have to take my word for it, in document 5 (a) 5, that

has the title background. 6284, this is the beginning of the long section in the public records act that lays out the various exemptions to the public records act. It says essentially, nothing in this section shall be construed following, section B, section C, litigation or personnel files, the issue that has arisen not in San José necessarily but in a number of government agencies with these two sections, is that they are written broadly enough that often questions arise as to what sorts of records related to litigation and what sorts of records related to personnel are public. And the best example, as we noted in the memo here, is the question of public employee salaries. And that is something that we now, as a task force, don't have to deal with, because the Supreme Court has made that decision for us. But it is an example of how this language has led to argument disagreement over what sort of personnel records are public. What sort of records related to litigation are public. So what we did was, because there are other sunshine laws out there, a couple of other cities, several other cities have sort of trod this ground before us. And the cities of San Francisco and then Milpitas chose to take a particular approach that is an approach with some modifications that we're register to the task force tonight. -- recommending to the task force tonight. Their approach, because you have to leave it intact, it's the law, 64 B and 64 C, the clauses you see in front of you, to incorporate in the sunshine law, that say here are the kinds of records that are related to records that are public, and here are the records that are related to employees that are public. This is intended to take some controversy off the table. We looked at what other cities had done in the area of litigation and personnel, made some modifications and then we are presenting those to you tonight and those are presented as you see in document 5 (a) 4. What I'd like to do is go into litigation first, and just briefly walk through the recommendations that we're making. There is one recommendation that we're making that I think the city attorney's office had some concern about and that Lisa will probably want to speak to. In 6254 -- in 5 (a) 4, sorry, wrong law -- on page 1 of 3 there, 5.1.2.030, litigation material, the following are public records subject to disclosure under the sunshine ordinance. A, a prelitigation claim against the city. These are claims that are filed with the city that are a precursor, if someone is suing the city for a particular reason, these have always been public in the City of San José, in my experience I've never had trouble getting them. B, a record previously received or created buy department in the ordinary course of business that was not protected by the attorney-client privilege when it was issued or created. The issue here is, there is a document that exists and it gets pulled into litigation because of the subject of the litigation. And then the question arises, is that document still public? It's part of the litigation now. If it had been created for the litigation, it wouldn't be. But it wasn't. And so this is to clarify that, in that kind of situation, the document remains public. And then -- I've lost, my page flipped here -- and then our third one is, when a lawsuit is finally adjudicated, or settled, the records between the adverse party including the text of any settlement, the issue there is this. The reason that there is a litigation exemption in essence is to protect the public agency from having to compromise its position to the adverse party. You don't want to force the public agency to have to reveal something through the public records act to the adverse party that would then disadvantage the public agency in the litigation. Communications between the public agency and the adverse party don't carry that risk. The adverse party already knows what the content of the communication is because it either receives the communication or it sent the communication. So in those circumstances, those sorts of documents also ought to become public. The reason that the exemption exists doesn't apply to those documents. Those three sections that I just read you, as I understand it, and I'm sure I will be corrected if I'm wrong here, the city as a normal course of business currently releases that sort of information. So this is merely to codify, if you will, a current practice. There is one additional portion of our recommendation on litigation that I want to call to your attention, because this is one that we changed significantly from what San Francisco and Milpitas had done. But I think there are still some concerns about it. And this is on document 5 (a) 4, section 5.1.2.010, it's up at the top, and it's under the heading advice from the city attorney's office. In the cities of San Francisco and Milpitas, the section that is similar to this says, in essence, that any advice that the City Attorney renders, having to do with the subject of the sunshine law, the public records act, the Brown Act, the political reform act, is a public document. So if it is the case that a councilmember has asked the City Attorney for advice about whether or not a document can be withheld, and the City Attorney issues a memo to the councilmember saying, you can withhold this or you can't withhold this, that memo then becomes a public record. Which I think in theory is something that the subcommittee had some sympathy to. Because the notion that is something of an appealing notion, is it's important for the public to know the extent to which the city attorney's office, its public officials are upholding or not upholding these sorts of laws. I had the occasion to speak to some people in -- some attorneys in these cities who had worked with this law, and what they advised me and what I told the subcommittee and I think the subcommittee as a group found persuasive was that in practice, it doesn't work quite that way. It, because

people don't want to compromise what they view as their attorney-client privilege, you often end up in a situation in which either advice that might be better commemorated on a piece of paper is offered only orally, or a councilmember who has a question will use the City Attorney but will use outside counsel for the advice to avoid the disclosure. And the public probably one way or another would end up paying for that. Talking about that situation, and talking about the importance of attorney-client privilege in those situations, the subcommittee made the judgment that we thought, as a practical matter, the San Francisco and the Milpitas ordinances were overbroad. So what we are recommending instead is that any written interpretation that the City Attorney makes of the public records act, the Brown Act, the political reform act, or the sunshine law, should be public. But this provision does not require the disclosure of the actual advice given to any client. If the City Attorney says, makes an interpretation of a section of the sunshine law, the guts of that interpretation, the general thrust of that interpretation, ought to be something that the public knows about. But the situation that a councilmember found himself or herself in that led to posing the question is protected by attorney-client privilege. So those are the recommendations that we're making to you, on the issue of litigation. Lisa, do you want to talk about your concern, about the last of those and then we can take any questions.

>> Lisa Herrick: Sure, thanks. Your memo that you submitted for this discussion, you said, you felt like the subcommittee had gone more than half-way or something like that. And you -- obviously there was definitely an effort to make some compromise and obviously we appreciate that. My concern is still that the -- to the extent that there's an interpretation of any of the laws that are listed, and I also have expressed concern at the subcommittee that that list is really broad, and I don't know why it's so broad, when this is the public records subcommittee, but my concern is that to think that an analysis of the law is going to be followed by, in conclusion, we suggest that you not do X, taking out, don't do X, is -- I think you're going to be able to glean the ultimate advice based on the interpretation. And it's very difficult to separate the ultimate conclusion from the analysis. Because they're intertwined in a way that -- otherwise you're going to get something that says, this is what the law says. Then there won't really be an interpretation, which goes to what you're saying, which it's going to -- the unfortunate results that simply you don't get interpretation in writing. That remains the concern. And I can answer any questions that you might have.

>> Ed Rast: Bob Brownstein.

>> Bob Brownstein: I'm trying to understand how this would work in practice. So I'm going to come up with one of my famous examples. [laughter]

>> Excellent.

>> Bob Brownstein: So let's say that the issue is, whether a document that indicates that there is a security system in the municipal water system, to make sure that nobody can put hazardous substances in the water supply, exists. And the question is, can that record be kept secret, or does that record have to be given to people who are interested in how the municipal water system operates? Or for that matter, protects public safety? So what I don't understand is, how do you do an opinion that says we should keep that information secret, without making it clear that there's a question about whether there's a safety system there, when it is in fact -- the existence of the safety system that you're trying to tell people about so they won't figure out it's there and trying to get around it.

>> Lisa Herrick: That's another fine example. Thanks Bob for helping me out.

>> Bob Brownstein: I'm not an attorney, there are several here. Maybe one of the attorneys could indicate how you would go about releasing the opinion and still safeguarding the information. And maybe there's a way.

>> Lisa Herrick: I think that it would be difficult. Certainly, I think the public records act now requires a reason why you're withholding information. And I think it needs to be explained in some generic term. So if you were to say we're withholding this information because -- I'd have to look at the, yeah, security concerns without being any more specific. And people felt comfortable saying that. I suppose you could do that. But I think you raise a good issue. It's difficult to have a discussion about that, as well as actually interpreting the

law and then coming to a particular conclusion, when it seems sort of clear, based on the analysis that you're making throughout the opinion or letter or what have you.

>> Ed Rast: Yes, Ed Davis and Ken Podgorsek.

>> Ed Davis: Bob, that situation happens all the time.

>> Bob Brownstein: Okay.

>> Ed Davis: It may surprise you but the law adopts a common sense approach. [laughter]

>> Ed Davis: And the common sense approach is that by disclosing what is intended to be kept confidential, you ruin the confidentiality, you don't have to do that. And the way that comes up most of the time is where for example the Mercury News goes into court and they want a particular document. And the judge is required, if he or she is going to keep at a document confidential, to explain why, and justify nondisclosure. But obviously, if the judge discloses what's in it, in terms of the justification, well, there's no more reason to keep it confidential. So judges for years have crafted decisions justifying their reason for nondisclosure, without disclosing what is meant to be kept confidential. So I'm not saying it's necessarily easy but it happens all the time. So I'm not saying whether, in this situation, they should or shouldn't do it. But it's a situation where people are faced with that issue all the time. And they craft their opinions based on common sense, in terms of the justification. And in the example you gave, if disclosing any information at all would endanger public safety, then you don't disclose it. And you say that. And that's the end of the analysis. So it happens all the time. And it's relatively easy to handle.

>> Lisa Herrick: Well, and I think that the analysis that the courts use is basically employing a balancing test and saying that the interest in nondisclosure outweighs the interest in disclosure. That's the way you say it. It's a benign, generic way of disclose it.

>> Ed Davis: That's not the test but that's what they they say. And the court situation is, whether there's a substantial probability of harm to the public. And then craft their decision, and disclose as much as they practically can without giving away the secret.

>> Bob Brownstein: Well, thank you. That's been very helpful. And I was wondering since that was the apparently the way that people try and deal with the problem that I just mentioned, if that standard could be included in the text, could you say it again? Substantial harm to the public, was that it?

>> Ed Davis: Well, that's the test that's incorporated in trying to get a court record. I don't know what balancing test you wants to apply here.

>> Bob Brownstein: Because I would be more comfortable if some language would be included here that made it clear that there is going to be a standard that the city can rely on so that it wouldn't be subject to the information of releasing information it really shouldn't release as it tries to comply with this paragraph.

>> Ed Rast: Ken Podgorsek then Dave Zenker.

>> Ken Podgorsek: I actually have a coming comment on section C. I want to show there is actually a propaganda aspect that could actually work. I'm going to use my example. Let's say somebody makes a request for the public records for the security system for the city water system, because they believe there is a security system, and they'd like to know how it was run. The City Attorney makes it -- you know, let's say let's see the city doesn't have a security system in the city water system, you make the disclosure, the disclosure of the City's security system for how to keep terrorists from getting into our water system, would endanger public safety, implying that you actually have one, when in reality you really don't. What I'm saying is, you could really use this to your advantage if you really have a problem. I want to ask a question on section C, on when the lawsuit is finally adjudicated or finally settled. That questions question. My question has more to do with a process thing, and I'm thinking more in terms of a multiplaintiff lawsuit against the City of San José. If one plaintiff settles, this is, you know which I imagine happens occasionally, if one plaintiff

settles, I'm assuming that the information doesn't become disclosed until the entire lawsuit is settled. I could see some potential harm in releasing settlement information before the rest of the plaintiffs have completed the process.

>> Tom Manheim: Lisa, can you take that one?

>> Lisa Herrick: We actually can't -- we can't make confidential any settlement agreement at any time. If it's in the middle of any litigation that is not concluded with one particular party or all parties, at the ultimate conclusion of the litigation, we can't ever make settlement agreements confidential.

>> Ken Podgorsek: Let me go one step further. Okay, I understand that, I remember that now. But my part that I think has got the concern is the communication between the department and the adverse party. That goes beyond a settlement. And you know, that might, you know, so with that communication, would that communication be normally available if you've settled?

>> Tom Manheim: While Lisa is thinking about answering that, I thought I would just step in and provide maybe some reassurance that the language here reflects current practice, the city is very comfortable that it provides us whatever protection we can have legally.

>> Ken Podgorsek: Okay, I'm satisfied with that answer.

>> Ed Rast: Dave, then Brenda.

>> Dave Zenker: Dave Zenker. Still struggling between the separation of the interpretation and the advice. I guess the question is back to Lisa then, I'm thinking realistically, logistically here. If the City Attorney is asked to do one of these interpretations of the Brown Act or whatever it's to be, that's considered attorney-client privilege if a councilmember is asking for that interpretation, there's really going to be the generation of two documents, won't there? I mean, there will be the interpretation, separately from the actual advice.

>> Lisa Herrick: Well, I mean I guess if there's -- I guess that's what one would have to do. For the conclusion, see my next letter, which is going to be a public record.

>> Dave Zenker: I mean, I guess I'm kind of getting that particular because --

>> Lisa Herrick: I guess the concern -- here my issue -- my concern, I think the issue is that it's very difficult to separate away the ultimate advice is going to be from the analysis. You can't get from -- you can't say, you know, the public records act says this. Case law says this. We've interpreted it there way. And in this case, this is the particular situation, you have these records, and so in conclusion, and just -- and just put the conclusion in a separate document.

>> Dave Zenker: Well, I guess the reason I'm not even sure where I'm going with this. But I'm just thinking of a Brown Act violation. And a particular councilmember thinks there might have been one. I'm not even sure where I'm going with this, somebody might have to stop me and slap me or something. But there's concern that something might have happened and they want to keep this secret first and they want an interpretation and there were gee, a number of councilmembers that met about the budget, and I need an interpretation to determine whether this in fact did or did not. Let's keep this in attorney client privilege realm. And we have this kind of provision sitting here. The public gets wind of this. And this is either sitting in one or two documents. You know, these documents could ultimately be subpoenaed later, be part of litigation, whether it's actually sitting in the blacked out document or two different documents. I think we got to -- I think we need to be thinking about how this could be generated, real world issues later on.

>> Ed Rast: Ed Davis could maybe give us, then we could go back to the other.

>> Ed Davis: Bert, this question to the subcommittee is, could you consider the effect-d because we have a different or may have a different setup than either San Francisco or Milpitas in the sense that we have our open government officer who will be reviewing decisions with respect to public records act. And the open

government officer, if -- has to make a written decision as to whether upholding or supporting or not, the decision of the city. And is there as much need, because of that layer of protection, for the city attorney's opinion to be made available, as in either Milpitas or San Francisco, which doesn't have such a person?

>> Bert Robinson: I don't know how to really equate those two things. The purpose of this sort of language is for a situation like the following. Let's go back to Dave's example which I think was a fine example on the whole question of a Brown Act violation. Which was a fine example because it's a very timely example because, of course, it's in -- questions about that are in the news right now. And I think the purpose where this isn't what's happening in the City of San José so let me just say this. If you were in a situation where the City Attorney were consistently giving advice to councilmembers about how to evade the Brown Act, there would be, I think, significant public interest in the fact that the City Attorney were doing that. I think that Lisa is correct that sometimes drawing the line between the general advice that the City Attorney is giving about how to interpret a law, say, the Brown Act, and the specific advice that is being given to a client about a specific situation, is not always -- it's not always going to be a bright line. And the City Attorney is going to have to make some sort of judgment. But I think you're going to have to leave it to the City Attorney to do that. Because I don't know who else can do it. Because it's going to be the city attorney's advice. The point is, that the public has special interest in the advice that the City Attorney is offering about public records and public meetings issues. And there ought to be a way to get that advice, the gist of that advice, into the public realm without compromising attorney-client privilege. Who's going to have to draw the line there? The City Attorney. Is the City Attorney going to draw it appropriately, I think you'll trust that the City Attorney will draw it appropriately. It's the City Attorney's advice. The City Attorney can really draw the line wherever the City Attorney wants to because you can trust that. Let me know, it will keep from me having to say this later. One thing, just for those of you who don't get a lot of responses to your public records act requests from the City Attorney as I do. One thing I wanted to point out is that -- and I'm sure this doesn't happen with all of the advice that the City Attorney gives to councilmembers. But a lot of advice that the City Attorney gives councilmembers about public records is public now, because what happens is, we file a public records act request and we say, we would like the internal memos that Trixie Johnson generated on X. And then we get a response from the City Attorney. And the City Attorney says you can't have those, and here's why. And that's the interpretation and it's in the public and it's really not a problem. So I don't know that this is -- I guess what I would say is, I don't think this is an especially scary thing. It really happens as a matter of course a lot of the time now. There is public interest and generally understanding in how the City Attorney is advising his or her clients on these laws, because there's special public interest on these laws, and I think there's -- if you hand this authority to the City Attorney, it will probably work fine. And if it doesn't, it can be modified later.

>> Ed Rast: Dave, does that finish up with your comment? So now to Brenda.

>> Brenda Otey: My question might be moot at this point. But my question was, exactly where is the line between the written interpretation and the advice that's subject to the attorney client privilege, and who decides that? And then also, specifically, if staff has a problem with this, the specific problem with this language?

>> Lisa Herrick: I think the line is difficult to draw, and the specific problem is, the line is difficult to draw, you will necessarily be disclosing the advice of -- and disclosing attorney-client communications which are privileged under the law. Having said that I did say when I was first making my comments that we do in fact make responses in response to public records requests that do give an explanation as to why information is going to be withheld just like Bert said. And you know, maybe a suggestion could be that you focus this recommendation simply on the public records act so you make sure in every situation you're going to get whatever the analysis is.

>> Bert Robinson: Lisa, what if it would be the applicant records absent, the Brown Act and the sunshine act? Those are the acts that are in play here.

>> Lisa Herrick: I'm not here to negotiate but it would be better.

>> Bert Robinson: Would the city attorney's objections remain if it were modified to the Brown Act, the sunshine law and the public records act?

>> Lisa Herrick: There would be fewer objections, because that is a more limited list. I don't know how to -- I'm sorry, I can't --

>> Bert Robinson: Someone who is on the task force would like to offer that as an amendment, that would be fine with me.

>> Ed Rast: Bob Brownstein.

>> Bob Brownstein: I would like to offer my own amendment, Bert, if you want to offer yours later, that's fine. I want to accomplish two things. One, I think Dave's probably right, that we may need two documents here. So one amendment that I'm thinking of is that we would ask that the City Attorney will release a document that explains any written interpretation provided by the city attorney's office on this list of laws to the City Council. So that whereas the actual interpretation that they gave to their client describes awe the nuances and details of the thing that they think should not be released, they then have the opportunity in a separate document to say, we gave the City Council some advice regarding the public records act and issues of security of public facilities, and indicated that they have a right to withhold information that might enable those facilities to be endangered, whereas the actual document that they give the City Council goes into a much more detailed analysis of the specific materials or securities systems or what have you that they're trying to protect. The other thing that I'd like to accomplish in an amendment is, I understand this is going to be difficult for the city attorney's office to do. I think that's in itself not a sufficient justification to avoid trying to move in this direction. But we want to give them guidelines so that they can justify doing this difficult task and saying no, and not having people immediately assume that they're failing to follow the direction of the sunshine task force. So what I would want to add is, where it says this provision does not require the disclosure of actual advice given to the client, that it also, I want to say specifically, it does not require the release of the specific information that the city is alleging it does not have to release. I.e, the -- you know, the point of the request in the first place. And then I would simply add, the standard that Ed Davis mentioned, because it seems to me like a reasonable standard, and I can't come up with a better one, that they would not be required to release information that could cause substantial harm to the public assuming that's the standard that most judges would apply in these cases anyway. So to restate, because that took a little bit of time, there's really two kinds of amendments here. One is an amendment that says the City Attorney will release a document that explains written interpretations of article 1, public records act, Brown Act, et cetera, et cetera, that are provided to the City Council, and --

>> Tom Manheim: Bob, do you want to limit that, so the advice to the City Attorney wouldn't be included?

>> Bob Brownstein: Good point, to whoever they give it to the city, to their clients in the city. If there's a better way to say that, tell me.

>> Bert Robinson: I can't imagine a better way.

>> Bob Brownstein: Okay, to their clients in the city. Then I would add this provision does not require the disclosure of the actual advice given to any client, does not require the release of any specific information that the city is alleging does not have to release and does not require the release of certain information that could cause substantial harm to the public. And I'm doing that from the perspective of trying to create space so the City Attorney can in fact do this difficult task and be able to answer people if their knee jerk response is, hey, sunshine task force said this and where's your interpretation?

>> Bert Robinson: We don't in fact have a motion on the floor. How about I offer a motion that would be --

>> May I interrupt and just get a clarification? Bob, the first piece is at a summary level?

>> Bert Robinson: You're saying, release a summary of any written interpretation?

>> Okay, thank you.

>> Bert Robinson: So I will move the subcommittee's recommendation on litigation with Bob's suggested amendments.

>> Bob Brownstein: I'll second it.

>> Bert Robinson: I thought you might.

>> Trixie Johnson: At some point we'll see it written out in reasonable English.

>> Tom Manheim: Could I just try to read back what I think it is to see if I'm reasonably close?

>> Bert Robinson: Can I do one thing before we do that? Let's remove from this list of things that we're interpreting, the California constitution and the political reform act. So we're just focused on the public records act, the Brown Act and the sunshine law. We'll remove the ethics ordinance also. We'll have those three because that's really the concern of this task force. We'll stay focused on the what the concern of the task force is.

>> Tom Manheim: I'm going to try. Upon request the City Attorney will release a summary document that explains any written interpretation made to a client on the public records act, the Brown Act, and the City of San José sunshine ordinance. This provision does not require the disclosure of the actual advice given to the client. It does not require the release of the specific information that it is not -- that it is -- the specific information that it is trying to protect.

>> Bob Brownstein: Fine.

>> Tom Manheim: That the city is alleging it is trying to protect and it is not required to release any information that could cause substantial harm to the public.

>> Bob Brownstein: You did a very good job. Thank you.

>> Dave Zenker: That it alleges could cause.

>> Ed Rast: Bert, and then I'd like to get a comment from Lisa on. Do you have a comment?

>> Bert Robinson: No, I suggest we go ahead and vote.

>> Ken Podgorsek: I need a point of clarification on this.

>> Ed Rast: We need discussion. Lisa did you want to comment or --

>> Ken Podgorsek: Quick point of clarification on your motion. Bert, are we only talking about section 5.2.1.010?

>> Bert Robinson: No, my motion would also include.30, we could vote on those because we also have the personnel to do.

>> Ed Rast: We have a motion on the table, we have a second, discussion. Basically you're doing page 1. All of page 1 --

>> Ken Podgorsek: Except to be discussed by the task force.

>> Bert Robinson: Actually, we already addressed the memoranda last week.

>> Ed Rast: All of page 1 as amended. We have discussion on it? Brenda.

>> Brenda Otey: I have a question. Just, is there a need to put anything in there that's -- that states specifically that the City Attorney decides whether it should be released or not?

>> Trixie Johnson: I think that's kind of implicit.

>> Bert Robinson: The City Attorney doesn't decide whether, the City Attorney decides how.

>> Brenda Otey: As far as whether it's under attorney-client privilege or not, the City Attorney makes that decision, right?

>> Bert Robinson: I think that's implicit, yeah.

>> Brenda Otey: I don't know. Things are not always --

>> We're writing everything else down.

>> Brenda Otey: What everybody's common sense is, is not always the same.

>> Lisa Herrick: The privilege belongs to the client, which is the council. So I think that the attorney's office -- we make the analysis that if we are giving advice to our client that is probated by the attorney-client privilege, the client can waive that privilege at any time. So we -- we're not making -- the only decision that we're making -- well, I don't think we're making the decision. We're making the analysis that we have some communication orally or on paper or in writing, rather, and that that is a communication to the client. All matters pertaining to that communication apply and it's statutorily protected.

>> Brenda Otey: Is there any need to put anything like that in here or is it okay the way it stands?

>> Lisa Herrick: I'm not sure what you're trying to get at so it's hard for me to answer that question.

>> Tom Manheim: Is the question should this be left to the City Attorney to decide versus the open government officer or some other entity?

>> Brenda Otey: Who decides, it's clarifying that.

>> Tom Manheim: I think the issue would be who makes the determination based on the information here about what will or won't be released.

>> Lisa Herrick: Who decides what, that's why I can't answer your question. Because I don't know what it is that you --

>> Brenda Otey: As far as the disclosure of what -- if it's going to be disclosed or if it's going to be held under attorney-client privilege, who makes that decision? And I could say, is it maybe implied or is it clear to somebody who didn't sit in this room tonight and hear all this?

>> Ed Rast: Ed Davis. Clarify for us.

>> Ed Davis: Brenda, that is a great question, it's almost existential, to waive the privilege. The City Attorney not in San José but in other jurisdictions I've dealt with, the City Attorney tells me, A, this the nonsense, but the council's told me, not to turn this over even though I think you're entitled to it. You know, off the record.

>> Tom Manheim: Thank you for clarifying that is not us.

>> Ed Davis: Believe me, I said the first thing.

>> Tom Manheim: Yeah.

>> Ed Davis: So that does happen where the decision-maker, the City Council says no, we're not turning over, I don't give a damn what my lawyer says. So technically, it's not the City Attorney that's making the decision with respect to waiving the privilege or even whether the document, the record is going to be disclosed or not. It may be department head, it might be a wide variety of sources within the city government who makes the ultimate decision. So you can't really dump that on the city attorney's office.

>> Bert Robinson: But is it clear that -- that's clear who has the privilege, we don't need to add any language to say that?

>> Ed Davis: No, I don't think you need to add language.

>> Ed Rast: Dave Zenker.

>> Dave Zenker: Sorry if this is a dumb question. But help me with the provision, upon request, if this is information that's held under attorney client privilege to start with, how would you for example as a newsman know to request this document that we've now created this written summary?

>> Bert Robinson: We have our ways.

>> Dave Zenker: Of course you do. But what's your thinking beyond request provision?

>> Bert Robinson: If you don't say request, it seems to me you're putting on the city a requirement to publish on some sort of a regular basis. I'm not sure how that would happen.

>> It would end up in Dan's index.

>> Bert Robinson: I think it has to be upon request. Because as I say, if you don't say upon request, it is what are you requiring? That the City Attorney just has to release them as a matter of course, every time the City Attorney does this?

>> Lisa Herrick: Basically means every time we send an e-mail to anyone who we advise, if it's related to a public records request that we automatically have to publish that. Could we CC the Mercury News on that.

>> Bert Robinson: I would love it if they would do that but I'm not sure it's practical.

>> Dave Zenker: Kind of like a tree falls in the woods.

>> Ed Rast: I couldn't hear you.

>> Dave Zenker: Never mind. Doesn't need to --

>> Ed Rast: Bob Brownstein.

>> Bob Brownstein: I think this adoption by the City Council is a delegation of authority to the City Attorney to perform this task. The City Council doesn't have to make that delegation, but they're telling the City Attorney that the City Attorney is authorized to do what this paragraph says. So I think if they vote, if they accept this language, they're essentially delegating to you, this assignment. That's my interpretation. I mean, if I'm wrong, you can tell me. But I think that's what they're doing.

>> Lisa Herrick: That every single time someone makes any analysis that's in writing, that that has to be published somehow, somewhere?

>> Bob Brownstein: Upon request. The City Attorney will release any written interpretation.

>> Lisa Herrick: Oh, I agree with that.

>> Bert Robinson: We've modified that. A summary of.

>> Bob Brownstein: A summary, right. But it's on request.

>> Bert Robinson: Right, right.

>> Lisa Herrick: We're saying the same thing. I thought you were saying something different.

>> Bob Brownstein: What I was saying is, if somebody requests this of the City Attorney, they don't have to go -- and the City Council adopted this language, you don't have to go back and get permission from anybody?

>> Bert Robinson: Not -- I think that is a different question than the other question. How do you determine what is covered by attorney-client privilege and what isn't covered? The answer is, the attorney-client privilege is held by the client. But that's not the same issue as --

>> Ed Davis: The results are the same and I don't think we need any modification of this language.

>> Ed Rast: All right, call for the question. We've called for the question. Closed discussion. Vote on closing the discussion. All in favor? Aye. Opposed? Passes, we now vote on the motion as memorandum. Any questions before we vote on the motion?

>> Brenda Otey: You just closed the comments.

>> Ed Rast: I'm asking for clarification, that we understand exactly, all clear, great? Okay. All in favor of the motion? Opposed? And abstentions? Motion passes.

>> Bert Robinson: All right, let me move to the next one to see if we can maybe get this one done, too. This is personnel information. And again as I said before, the concept here is much the same as what we were doing with litigation. There is the broad language that is already in the public records act. Personnel William medical or other types of disclosure that would cause an unwarranted disclosure of personal privacy. San Francisco but not Milpitas has taken an approach in which it describes extensively what sorts of information are not covered by that clause. Again, I don't think this is meant to be encyclopedic in any way, but it is meant to say this sort of information is not public, not covered by the personnel exemption. The subcommittee discussed the list that's incorporated in San Francisco's ordinance. And and we mostly liked it. The information we are recommending incorporating in San José's ordinance is focused on on salary benefits, employee compensation and benefits. San Francisco also requires the release of an employee's age, gender and ethnicity. The subcommittee was concerned that information strays too far into the public realm. We are not recommending that. That is the recommendation of personnel.

>> Ed Rast: Questions, Mary Ann.

>> Bert Robinson: Mary Ann, can I interrupt for just a second? There is one thing I forgot to say. There is one part of our recommendation regarding personnel that is part of the San Francisco ordinance that we're not ready to bring to you and that has to do with employee discipline. That will be coming subsequently. I just didn't want you to think this was the last you would hear on personnel. You may wish it was the last but -

>> Mary Ann Ruiz: Are you saying you're coming back with further recommendations on that?

>> Bert Robinson: We are attempting to come up with a consensus on records regarding employee discipline which we would bring to the task force. But we have not concluded our work on that portion yet.

>> Mary Ann Ruiz: Okay. The only thing I wanted to do was to thank the subcommittee. I know we've gone back and forth on this issue more than several times. And I really think you guys have listened to us, I really feel my concerns are addressed and I'm ready to support this. So I can make a motion that we approve the personnel information.

>> Ed Rast: Do we -- Virginia seconds. Do we have a motion on the table? Discussion? Ken Podgorsek.

>> Ken Podgorsek: Just a clarification, not that I have a problem with it, but this applies to every employee of the City of San José, not just a certain group of employees?

>> Bert Robinson: Yes.

>> Ken Podgorsek: Regardless of their position?

>> Bert Robinson: Yes.

>> Ed Rast: Any other discussion? All right. All in favor of the motions? Signify by saying aye. All opposed? Bert.

>> Ken Podgorsek: Now, that's a record!

>> Bert Robinson: Feel leek we did something wrong.

>> Tom Manheim: If you could just make -- Bert, if you could be so kind to make sure that all of the future subcommittee recommendations go that smoothly.

>> I'll second that motion.

>> Figure out what you did right, Bert.

>> Ken Podgorsek: We could be done by today.

>> Ed Rast: Okay, Bert.

>> Bert Robinson: I think that's it.

>> Wait, no, we had to come back and vote on these dates.

>> Tom Manheim: I'm reminded that I, at the start where I went over the dates with you, that was the unofficial thing, we do need some official action, just approving the new dates that we have set out for the task force. That would be simply cancelling the next meeting, which is March 6th, adding a meeting on April 3rd, and --

>> Ed Rast: Tom hold on a second. Bert, you're finished with your section, right? Tom, go ahead.

>> Tom Manheim: My apologies.

>> Ken Podgorsek: We're so excited.

>> Tom Manheim: Okay, I'll make it quick. We would ask the task force to approve the following changes to the existing schedule of meetings, cancelling March 6th, adding April 3rd and adding April 17th.

>> Ken Podgorsek: I move we accept staff's recommendations as suggestions.

>> Second.

>> Ed Rast: Discussion? Fine. All in favor? [ayes]

>> Ed Rast: Bert, do you have a --

>> Bert Robinson: I was voting.

>> Ed Rast: All in favor, aye.

>> Who is the second, please?

>> Ed Rast: Bob was. All right, so we're going to vote on it. All in favor? Aye.

>> Ken Podgorsek: Voting again, okay.

>> Ed Rast: Opposed? Abstentions? Motion passes.

>> Ken Podgorsek: Let's do the open forum.

>> Tom Manheim: We'd be happy to distribute this.

>> Ed Rast: Agenda item and work plan.

>> Ken Podgorsek: He just did that.

>> Ed Rast: We have the meetings. Is there any comment on the work plan, what additionally needs to be done? All right.

>> Dave Zenker: Dave Zenker. Has anybody, and I know you guys Pete often, and regularly, but has anybody actually backed up and done an inventory to check back and circle around to see if we've got everything?

>> Tom Manheim: To see what's left? We believe the inventory is the left-hand column of the overhead. The remaining items are what the subcommittee is working on there.

>> Dave Zenker: There's no dangles out there?

>> Tom Manheim: Not that we're aware of. And unless the task force directs us to look for any more things, we're going to stick with this. Unless there are other things the task force is aware of.

>> Ed Rast: Ken Podgorsek.

>> Ken Podgorsek: I think one of the last things we're going to do and I don't know why I would do this, I'd be willing to chair this if there are additional volunteers, I think the last thing we should do we have had a wrap-up mission statement that goes with the ordinance that also demonstrates the intent of the task force for perpetuity. I think in the long run, demonstrating our intent in sort of a global kind of sense, pay help future open government commissions and City Councils know what the -- know where we were going and what we intended to do with this. In the case of interpretations. And I'd be willing to chair that subcommittee. And we could do that at the end.

>> Dave Zenker: One suggestion might be to look at the ethics and conduct section. There are some intent statements in there. I know they probably don't go as far as maybe what you're thinking about but they should I think at least be a foundation for what you're --

>> Ken Podgorsek: I agree with you on that.

>> Ed Rast: Additional discussion?

>> Ken Podgorsek: No volunteers? That's what I might do.

>> Ed Rast: I'll --

>> Ken Podgorsek: You'll help me on it.

>> Ed Rast: All right, any other comments, as far as -- do we have to make a motion on it?

>> Virginia Holtz: There were some talk and I want to make sure I captured it all and heard it correctly, is that both you Ed and Ken are going to look at the ethics that we have already -- code of ethics that we already established and come back, we'll look at that, come back and see if that covers what we are -- the intent for what you wanted to --

>> Ken Podgorsek: Yes, or use it as a foundation to build an overall preamble or mission statement or whatever, to the ordinance. For review of the task force.

>> Ed Rast: Tom Manheim.

>> Tom Manheim: I think that's an admirable thing. I will caution you, having sat through many sessions where people try to craft mission statements, you may be opening up a large can of worms if you stray far beyond what has already been approved in the ethics. It's just a concern. It's up to the task force if you want to take that on.

>> Ed Rast: Ed Davis..

>> Ed Davis: I agree, it's a laudable concern but I'd like to echo what Tom said. In the legal realm it's like a legislative history. Legislative history is a mixed bag. The only time you look at a legislative history theoretically if the law itself is so ambiguous that you need to resort to something else to figure out what the legislature meant. I'd suggest that -- again, not suggesting this is a bad idea, time should be spent on making sure we're clear in what we said originally, instead of trying to explain, you know, in something else why we might not have been clear in the first place. So let's concentrate in getting a clear and precise originally so we don't have to explain it.

>> Ken Podgorsek: We've been through that too.

>> Instead of a mission statement, I suggest we have a celebration.

>> Tom Manheim: Amen and we'll supply the cake!

>> Ken Podgorsek: But I'd like to suggest is that let Ed and I take a look at what's in the ethics and see if that meets it. If we come up with something that's easy, that makes sense, we'd like to present it. If it doesn't make sense, I don't -- I don't expect it to -- I certainly don't want to be here until December to discuss this topic. If we can't get to -- if we can't make it clear and easy to understand and hopefully pass as quickly as Bert's last motion did, you know, then it probably should be something that's put on the table. But I'd like to make the attempt.

>> Ken, the document you might consider is the cover letter on the phase 1 report. It's got a nice phrase.

>> Ken Podgorsek: That's correct. Something that we might incorporate but we'll take a shot at it.

>> Ed Rast: Virginia.

>> Virginia Holtz: Just to be clear, the two of you will meet, you don't need to have staff on board with this?

>> Ken Podgorsek: No, unless staff feels that they need to be there. I like the old hands volunteering over there.

>> Lisa Herrick: If you need something drafted, I suggest you try and make sure I'm available.

>> Ken Podgorsek: Exactly. I can pretty much assure you Lisa I'm not looking at multiple meetings here.

>> Ed Rast: Anybody else interested? Brenda is interested. All right, anything else? Is there anything else? So that completes the agenda item on next meeting and work plan. We have open forum.

>> Ken Podgorsek: I move adjournment.

>> Second.

>> Ed Rast: All in favor? [ayes]

>> Ed Rast: We're adjourned. [8:13 p.m.]