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>> Ed Rast: If all the task force members will have a seat, and we'll start in about a minute or two. If the task force members who are here, if you haven't read the minutes take a minute and read them that way we'll move to the agenda. We've got a quorum. All right. Good evening, and we're going to call the Sunshine Reform Task Force meeting for March 1 to order. The first agenda item is approval of the minutes.

>> I have an amendment, a correction to the minutes. Page 2. C, number 2. Require all staff reports and other supporting documents related to items on the agenda for the expenditure of 1 million within one calendar year. Within one calendar year should be added. And I would also like to note my concern that the threshold of a million is too high. I think it should be \$750,000.

>> Ed Rast: Mayor Mary Ann, are you amending to make your comment included or are you making that comment for later?

>> Mary Ann Ruiz: I'm amending these minutes.

>> Ed Rast: Okay. You can amend the one thing did you but unless you made the comment at the prior meeting you can't amend the \$750,000.

>> Mary Ann Ruiz: I did.

>> Ed Rast: You did? Okay, fine, we'll amend that.

>> Mary Ann Ruiz: So that's my motion.

>> Ed Rast: It's an Emmys amendment to it. Any additional comments? Do we have a motion? Did somebody make a motion?

>> Mary Ann Ruiz: I made the motion.

>> Ed Rast: Okay, great. Then we have a second. All in favor, aye? Opposed, and Bobbie Fischler abstains. Let's see. I'll keep my comments short tonight. We've got the public meeting provisions and then we've got the wrap-up on the public information. And then next week, I'm sorry, the next meeting we'll do is we're going to go back to closed session and we'll pick up the rest of the public meeting items. And there are, on the public meeting items there's going to be the stacking effect which is multiple meetings. As an example, say an example would be a proposed park. The item would potentially go before the parks and recreation but it also potentially might be going before the youth or senior commissions. Because that might affect some of the items on a proposed park might affect them. And then it would go to the City Council. And what we want to do on the stacking item is make sure that we don't have a series of meetings that would make the processing of the legislation through or the particular decision through, would extend out beyond about 30 or 45 days. So we have some ideas of how we can work that out. The other item, items of significant community interest, those items in some cases right now are taken before a particular, either director's hearing or policy body and they're not -- they haven't been appealable to the City Council. We also I think Bob tonight has the issue on public subsidies we'll talk about. The mayor's office brought up an inquiry and asked on council memos if we had considered the idea, if a council memo was proposing a new content or proposal in an area not covered by a staff report. So we'll bring that issue back up again on council memos. What we had talked about in council memos was the staff report which would be out and then the councilmember would comment upon the staff report. But there is on a few occasions, the councilmember proposes something that is not in the staff report itself. And to be able to give the public time to understand, and be able to comment upon it, they suggested that we go back and take a look at that item. We'll bring it up at the next meeting. That's all I have right now. Review of meeting materials. Sheila Tucker.

>> Sheila Tucker: Sheila Tucker City Manager's office. There's five, primarily documents in your primary agenda packet tonight. The first is the memo from task force member Bob Brownstein, his memo on major public subsidies. The second document is a staff report that looks at a number of issues, the first

part primarily relates to lobbying but section B recommendation is a cost-benefit analysis recommendation that we're going to talk more about tonight that relates to large public subsidies. The third document is our public information subcommittee recommendations. And as you know we have two outstanding issues that we hope to accomplish tonight. We have another memo from Bob Brownstein related to public calendar, release of public information. The document that you have not seen, a draft ordinance for public information section. So that integrates all of the recommendations that we've made to diet with the exception of calendaring and other public outreach. We wanted to get that to you in advance and start having you review that and that will be integrated into the phase 1 recommendation. There are three letters here that are not a part of the packet. They are letters related to the public subsidy issue or the first item on our calendar tonight. And I also just wanted to briefly note, there was some follow-up correspondence related to our Saturday session on police records. I did not bring that material tonight, but when we do agendize that topic for discussion again, we'll bring that as a distribution.

>> Ed Rast: Thank you, Sheila. Any questions? Another administrative announcement. Make sure you turn off your pagers, cell phones or anything else that might make noise and interrupt the meeting. We'd appreciate it. Also for the speakers make sure you are up close enough to the microphone that you can be heard. Next agenda item is discussion of public meeting provisions. Ken Podgorsek is unfortunately sick this evening so we'll move to Bob Brownstein regarding the major items. Bob Brownstein.

>> Bob Brownstein: This proposal has been before the task force a couple of times. What I'd like to do is review the principles behind it and then go over its major components and then also briefly make a few comments regarding the approach to cost-benefit analysis that's in the staff report, which is the next item on the agenda right after this one. The philosophy behind this derives directly from some of the goals that the -- City Council explicitly adopted when it created the sunshine task force. One goal is that the public should have a meaningful opportunity to participate in public decisions. And another goal was that stakeholders should be provided with an opportunity to be fully engaged before significant items are brought to a public body for consideration. For those goals to be met, the public needs two things: Time and information. And it needs time and information particularly when we're dealing with issues that involve a high price tag, are very complex, are often one of a kind, and are not normal transactions, purchases of goods or services, but are in fact the delivery of public funds to what economists would refer to as externalities, the kind of effect to have something located in a particular area. In order for the public to be meaningfully involved in these kinds of decisions, I think the recommendations included in my proposal make sense. At least in terms of minimum information, and minimum amounts of time. The city could always provide the public with more information, and more time, for something that's particularly expensive, and particularly controversial. So let me review the components of the proposal relatively quickly. First, the full staff proposal should be made available to the public 30 days before the City Council hears the issue. Again, I reiterate the fact that these are not plain vanilla -- proposals. They are unusual, complex, will involve significant analysis by the public and it is not something you can expect your average neighborhood group to be able to work on in 48 hours. Secondly. The City Council should have some kind of focused meeting regarding this proposal before the approval meeting, before the whole council. Now, there's a variety of ways this could be met. It could be met by a study session of the council. It could be met by a meeting of the council committee. It could be met by a citizen panel that the council calls into being in order to review the project. But one of these kinds of options, one of these focused meetings, should be available for an issue that involves this amount of money, and this level of complexity. And finally, the staff report should include certain minimum kinds of information. Again, more information is not a problem, but in every case, this minimum information should be available. Under minimum information, include three kinds of data. First, a cost-benefit analysis. Including net tax

revenues, that is, what tax revenues are going to be gained, and what will be lost if this subsidy is granted. Second, the fiscal opportunity cost. That is, not specifically, but what kinds of other things could the money be used for? There is a great deal of confusion in the public regarding, for example, redevelopment funds, whether, if they're granted for a public subsidy, that money could be used for police, firefighters or librarians. It can't be, and that kind of information ought to be provided up front, so people know what they should be comparing different projects with. Next, the impact on city services. That's self-evident. If a project is going to demand considerable police services it should be known at that time front end. And lastly, obviously the impact on neighborhoods. The next category of information is economic effects. And I list two here. Again, recognizing there are others that can be added. One is the net job impact, how many jobs will be added, and what kind. And again, I emphasize net. If jobs are lost, we want to decrease these from the effects of a subsidy. And also, the net housing impact. Are housing units going to be destroyed, are housing units going to be built, are revenues going to be generated for the construction of affordable housing which happens when redevelopment resources are brought into the redevelopment agency. Is there going to be a significant demand for affordable housing without that housing being generated? And finally accountability. We all know the city and the redevelopment agency has had some extremely embarrassing experiences in terms of lack of accountability. I think of the IBM building or the UA theaters as just two examples. To remedy that, the language I have here includes a schedule of reports back, on the progress that is being made to achieve the returns that the cost-benefit analysis indicated, and also, a clear statement of what options are available to the city, should the projected returns not materialize. So we don't wind up in a situation we were in with the UA theaters when the theaters disappear, or at least the operation of the theaters disappear in the middle of the night, in the middle of the week. Now, I have read the staff memo that is the next item on the agenda. And I would like to make a couple of comments regarding it. To a certain extent, it calls for a cost-benefit analysis that is more expensive and more exotic and broader than the one that I'm calling for. I'm not sure it's worth the money to get those kinds of more exotic cost-benefit analyses, but I don't have a philosophical problem with the city generating even more information than the information I'm calling for. The staff report also, however, includes several rather major exemptions to the proposal that I put forward. That is, broad categories of projects that would not be subject to the generation of the kind of information and scheduling and accountability that is in my proposal. I consider these exemptions to be large enough to sail the queen Mary through. For example, one exemption is, if the project received prior approval through the budget process. Often, prior approval in the budget process means there's a space-holder line item that says something like \$15 million for corporate headquarters downtown. Absolutely zero details on the project. It completely defeats the purpose of sunshine for the staff to be able to say there will be no need to provide people with timely information, there will be no stable minimum amount of information, there was a budget line item that included the money for this project, and therefore, it's exempt. Another example of an overly broad exemption. There are an extremely large number of adopted city policies, and virtually everything you can think of will implement one of them. I mean, there are adopted city policies that say we should try and have a vibrant economy downtown and attract visitors to downtown. Using this logic, there would be no reason to have any evaluation of the grand prix because it is implementing an adopted city policy. Clearly this exemption makes the idea of having any required standards for information or timing relatively useless any time the city decides it simply does not want to involve the public in a decision-making process. Then there is one exemption which says, "related to private lending deals." I was the budget director for the city for eight years and I don't know what that means. I doubt there are many other members of the public that do either. It could conceivably mean any time any private money is lent to the project no matter how small it's

exempted from having to go through this process that requires more time and more information to the public. So with those comments, I'd like to put my proposal forward to get the debate started, as a motion, as a way to deal with this issue. Thank you.

>> Ed Rast: Do we have a second?

>> Bobbie Fischler: I'll second.

>> Ed Rast: Bobbie Fischler? Discussion? Nancy and then Mary Ann.

>> Mary Ann Ruiz: Thank you, Bob, for pulling this together and explaining this. A lot of it makes a lot of sense, thank you very much. For the page reform of public process recommendations, number 2, I was wondering if you would consider adding where it says City Council study session, to add commission as one of the appropriate stakeholders that it could be reviewed from.

>> Bob Brownstein: I would consider that a friendly proposal.

>> Mary Ann Ruiz: Thank you.

>> My concern is about, you mentioned corporate headquarters as an example. If the city is set aside a fund to subsidize corporate headquarters that might be locating downtown or considering locating downtown, because the corporate sector seems to move faster than the government sector, I don't know if you could respond to an opportunity within this framework that might present itself. I'm not sure what the time line was with the BEA deal but I think it probably moved pretty quickly. Because there was only a couple of months ago that there was another operator or another corporation looking at that property. I think the reason the city sets aside money as they do and earmarks it as a corporate headquarters budget is because they know that when the opportunity comes up, they're not going to have a lot of time to react to it and they don't want to have to find money from different funds and go through the public process to have it approved. And I don't want to undermine that. That's all.

>> Bob Brownstein: I understand the occasionally the city will have the desire to move quickly. But you know, it is the taxpayers' money and the A money the BA proposal we're talking about \$13 million. Some of these subsidies are 20, \$40 million. I think it's incumbent upon city staff and city leaders to organize their negotiations and their work in this regard to be able to meet reasonable requirements by the public in terms of having a chance to review a very large project and also having basic information. If the city knows in advance exactly what the minimum information is going to be required, which is what I'm trying to do at this measure, they have every opportunity in the negotiations to tell the party they're working with, the way to move quickly here is to make sure that when we close the deal we'll know exactly what the answers are to these questions and we'll be able to meet the public's scrutiny and be able to have the 30 days be the full amount of time that would require and nothing more than that. I think the more likely problem with a major subsidy is that the staff doesn't generate basic information on time. The public finds out about the project very late. People have to play catch-up. They can't. Then they come to the City Council and say we want more time, the issue becomes more controversial than it needs to be. And instead of moving quickly, we wind up with more conflict, more controversy and eventually more delay.

>> Ed Rast: Dan McFadden.

>> Dan McFadden: Dan McFadden City Manager's office. I would like to thank Bob for putting this together. It shows a lot of smarts. In some ways he makes recommendations that would tighten up the City's proposal. But I'm still concerned, and I just open this up. We also have some staff here from redevelopment and from economic development who have worked on this. I have not worked on the City's proposal. And they may be able to take this a little further. But I'm concerned about the number of these projects. Because again, it's a tremendous drain on staff time, and you always hear staff time and that's not a justification. But for example, we have over 850 logged council referrals that are all backed up. My sense is, the volume, and you know the volume we deal with, Bob, that comes through here. I

could see a program where the mayor might select, if there was controversy, I'm not sure what that is, something special. It just seems to me there will be quite a few of these. If they come in, to do a decent cost-benefit analysis, we don't have a boiler room with a bunch of people doing this all the time. Some of this could be contracted out, but it would probably do 60 to 90 days to do a decent job, and get it back on the agenda and get notice on that, there is significant delay which is a problem. The biggest problem I have with it, I think in theory the concept is very good and if we're going to do it, we ought to do it right. If we selected out a number of big projects that makes sense to me. But I think there is such a gap again between the word and the act. We're going to set up standards here and we're going to say cost-benefit analysis, even if you just do quantitative stuff, even if you do that, it's going to be a considerable amount of effort. And I'm not sure we're going to deliver on it. I'm not sure we're going to deliver on the follow-up. It's a major workload. And I think it has to be narrowed down to have the impact that you want it to have. That's my opening statement, and Colin is from economic development and Noberto from economic development. They may want to add a word or two.

>> My name is:Omeara I'm with the office of economic development as Dan just said. First off the proposal we tried to pull together was in response to a recommendation made by the mayor's transition subcommittee on reform and trying to figure out a way to have the biggest impact we possibly can on providing information to the public while balancing the impact that the process and the cost would have of providing this kind of analysis. So this process was kind of discussed that both the CSA level and interdepartment working group which is actually the senior staff department level. Performing this kind of study in-house would have on staff time. Because we really don't have a good hand on it because for the most part we don't have a hand on this. We just did a comprehensive study on the events like the grand prix and things through HP pavilion. The study cost almost \$90,000, contracted out, it took six months by the time the Metcalf was developed, going through a public process to make sure the data and practices had a sunshine component and that process still hasn't completed its way through the city council. But it will in the next few weeks. So -- and we're actually very grateful for Mr. Brownstein's comments. Because they crystallize a lot of the ideas in the staff proposal. There is also a capacity issue which we just want to be very open and honest about. Like Dan said we don't have people that are really trained in this and the consultants that do this kind of work do have very expensive economic, econometric kind of, exotic things that Mr. Brownstein referred to in his testimony, there is a lot of debate over those. And rather than having a debate the methodology, he said he wanted to provide numbers that they were fairly confident in them as a mechanism to start debate. Then going out to the experts who is a consultant or something like that. Too often these numbers get the center of the debate themselves as opposed to having an objective standard from which you can make informed decisions. We are very willing to relook at any other proposals but we just want to make sure that this doesn't become so laborious that we end up spending \$150,000 on a cost-benefit proposal on a project that is only \$1 million. It makes 15% larger. We're looking to you for guidance. Thanks.

>> Ed Rast: The city does have no cost-benefit analysis in place?

>> We have, for the most part it's--there are -- there are general accounting standards that will work with the finance department and the budget department. There are those piece. But in terms of consolidating all those practices into one cost-benefit methodology, that work hasn't been done yet. It's on a case-by-case basis.

>> Ed Rast: Do other cities have this in place at this time?

>> For example, New York City creates an office of standards, Ph.D. economist kind of people that basically serve as that function, outside auditor function. Other concern that comes up is having a staff providing the analysis also as a question of objectivity. We don't want people providing the justification,

providing the justification mathematically that are also providing the rationale and advancing the proposal to the council. So you kind of want some separation for this so there's an independent kind ever viewpoint and kind of critical analysis. Mayor Bloomberg, there isn't that question of objectivity and the information is given many more analysis.

>> Ed Rast: How much, it isn't an infinite number, it is a finite number, a dozen types of analysis roughly?

>> We have had this discussion at senior staff level. Bricks and mortar projects, subsidies for companies to overcome the high barriers of like land and labor cost to have them located in this market. Those are the general categories. Probably looking like four to six categories of methodology.

>> Ed Rast: We would take a period of time to develop methodology for each one.

>> In the memo that went to the rules committee, the idea was to do three types of -- we proposed doing a kind of pilot project to see thousand staff would perform at this and the ideas that kind of came up through the conversation were things like Hayes mansion, things that the City's involvement in the subsidy of an ongoing facility, the public golf course usage, questions over how much the city revenues versus the city cost and the opportunity cost, and then most things like energy efficiency, things like through the action of kind ever conducting those cost benefit analyses. So then hopefully you'd have a standard that you could apply once that was agreed upon by the City Council.

>> Ed Rast: So see if I can summarize the staff comments. The staff is concerned if you don't have a methodology in place it would take too period of time to develop and essentially debug or verify the analysis. And you also concerned on staffing to do this. But once that was accomplished and do you have any idea or could you come up with an idea of how long, at what cost that would take to do it? After that was accomplished then you'd have the methodology in place to plug the numbers and you'd go forward and give the public an item where their tax dollars are going. You see where I'm trying to --

>> Yes, and I think that the only -- the only thought I would have is that the cost of the events methodologies developing the time is roughly \$90,000 in roughly about six months. That would be giving a ballpark.

>> Ed Rast: But you could reuse it. After that you would be able to reuse it and use in-house people rather than going to consultants year after year with when you do have a major problematic. Over time the internal development it and the reuse model might save the city over a five or ten year period of time quite a bit on outside consultants. Dan McFadden.

>> Dan McFadden: Dan McFadden City Manager's office. If you are talking a development year this is all on a management level. I think we're talking on a scale much, much higher than that. I don't know what the staffing would be, I don't know what the delay would be in terms of turning projects around. We do accomplish some economic analysis and cost benefit analysis in -- on the redevelopment projects before they come forward. And maybe Noberto can speak to that a little bit and tell you a little bit about what we do.

>> Bob Brownstein: Could I just make one comment?

>> Ed Rast: Bob Brownstein.

>> Bob Brownstein: These projects are justified to the public, based on the expectation they'll generate jobs. They're justified to the public based on the justification they'll generate tax revenues. The city should not be spending significant amounts of tax dollars with those justifications if it lacks the capability of determining whether those justifications will be met. So I mean, what I would say is, get capability of being able to say with confidence that we are going to get a decent return for our tax dollars and if we don't have the ability to do that, the solution is, don't spend the tax money. I don't think the city wants to go there. I think the city wants to make those investments. I think it wants to do it with public

support. Maybe the best alternative is to get the capability to demonstrate the kind of returns that we're claiming for the taxpayers we're going to be generate approximating.

>> Dan McFadden: Bob, did you have this kind of protocol in place when you were budget director for eight years?

>> Bob Brownstein: No, we didn't have it.

>> Dan McFadden: Why did you do that, how could you intend the tax money? I feel like there's good things being said here but I don't need to be preached to.

>> Bob Brownstein: I felt I was being preached to by the previous speaker, the difficulty of the data, the outcome of the investment that the city is planning on making. And without going into details, and we could have all of this discussion online, there were significant, shall we say, political forces during the years 1990 to 1998, that did not want any public scrutiny whatsoever of the redevelopment agency. I spent an awful lot of my time during those years in significant confrontation with those forces. I didn't win every time but it certainly was not for Wont of trying.

>> Ed Rast: We had one speaker who wanted to speak before 6:45. Is that speaker still here? Go ahead and speak, that way you'll be able to do it. Make sure all the speakers stand close enough to the microphone so your voice is picked up.

>> Tom Manheim: Tom Manheim you'll have two minutes and I'll give you 30-second warning on time.

>> Thank you so much for allowing me to speak now. I need to run off to another meeting. My name is Jaime Alvarado. The hard work you are doing has come about because of the results of the election last year. And so what came out of that was very loud and clear that the City of San José prioritized for the need for openness and honesty in government. That's the important thing. You guys are dealing with 10,000 details that I don't understand. But to keep in mind, that's the important thing, to prioritize the need for the process, to allow adequate time, for public review. People, voters made it clear, they did not agree with the process for subsidies in the past. And so I think it's fortunate really prioritize a process that maximizes the ability of the public to review subsidies such as this, the ones that you are discussing. The other thing is, there's been a comment made and I totally understand that the city at times needs to be nimble. Opportunities come up. That makes sense. At the same time, again, keep in mind that the priority is openness and honesty. I think you need to be able to strike a balance between being nimble and also ensuring public review. That is the spirit of everything that needs to come out of this committee. And one last comment, obviously there's a backlog as it is, in the City of San José, perhaps what needs to be looked at is what is the existing processes that create that backlog as it is, and not just unilaterally saying no to what comes along. Thank you very much.

>> Ed Rast: We'll go back to the other speaker. Thank you, Noberto for the one speaker being able to comment before he had to leave.

>> Sure, my pleasure. Good evening, my name is Noberto Buenes deputy director for the redevelopment agency. I've been with the redevelopment agency for seven months but with the City of San José for slightly more than 20 years in different capacities. A discussion on Bob's proposal on a couple of things, one the BA proposal is obviously something that's moving forward through the process. It's a document, as soon as the letter of intent was signed by both parties, was sent to the mayor and council and distributed to the public. So we almost probably have had 30-plus days of discussion on this project. I think it would be a good idea, and I know we will be doing this, given the work that you're doing here in the task force, to track the development of this particular agreement through the process, and see what we feel fits within the context of Bob's proposal, and see how the process that we have set in motion may meet the needs or the spirit of what the task force would like to see with these type of projects. So the timing is probably good with this particular proposal, so that we can track it and see as it works its way

through process, where we come out at the end. And then maybe come back to you and have a discussion on how it all played out. I would keep my comments more to the 10,000, 15,000 foot level at this point. And only to say that, you know, redevelopment as a separate legal entity and as really a child of the state, if you will, it was created by the State of California, we have some very, very specific requirements and regulations and policies that we have to follow. There's redevelopment law within redevelopment law. There are a number of procedures that are reporting procedures to the state, to the county, and to the citizens. And all I would say at this point is that as we make any changes that require us to do analysis, that we really get a good look of what it is that we're required to do right now, and find a way to be able to maybe either expand or make certain modifications. So that we can probably, within many of the requirements that we have, are able to live up to the spirit of sunshine. And sometimes, it may be as simple as providing an analysis that, maybe in the past, was taken for granted, and not circulated publicly, but it's an analysis that for all intents and purposes, it is a public document that's requested for. We may think that some of this analysis that we do is something that should be distributed to the public. In the area of disposition of property, many of you are familiar with the DDA, the disposition and development agreement, which has the, you know, I have one here for the CIM projects, about 20 pages long, and there are very specific requirements and questions that we have to answer. That's a document that needs to be circulated at least 50 days before it goes to the council. And again, my point here is, to make sure that we look at some of the requirements that we already have, and make sure that we don't add any additional time, unnecessary time, and -- to the requirements that already exist.

>> Ed Rast: Let me see if I can clarify something for the public and the task force. It is the task force's recommendation that these be on a pilot basis for up to a year, so we have a time to make sure that we do not have conflict with existing laws, and that we balance the need for sunshine with the constraints the city has, both in staff and in budget. But at the same time, you know, your comment was that how -- is there any time frame that you would, after looking at the documents, I assume you've looked at it beforehand, how long would it be before the redevelopment agency could get back with some indication of how feasible this is, and what the existing analysis that could be incorporated with this, already is being done compared to what would be added to it?

>> Well, I think we probably can use the BA project as it moves forward as something that we can evaluate and benchmark. That report, I believe, is supposed to go to council, that project on March 20th. So you know, taking a look at what the report includes, I've seen a draft of the document, and there's some analysis there regarding the revenue that's generated in terms of tax increment, in terms of the amount of jobs that are moved into the downtown, and the entire arrangement over that period of time, in terms of the city investment and how -- and what do we expect to get back over a period of time related to that particular -- to that particular deal, when it comes to parking and other arrangements that we may have. So I mean, I think that that will be, you know, a good case study, if you will, that we can follow and track and see how it would play out.

>> Ed Rast: And that would be finished in March -- I'm sorry, April or May?

>> You know, the proposal, it's supposed to come to the council if I'm not mistaken around March 20th. And again, the letter of intent, and I believe the most recent report from the Mercury News, was a couple of days ago. So pretty much, the parameters of that particular project and that arrangement have been out for close to about 30 days. You don't have a formal staff report, and that's some of the other things that maybe we can work with the task force and with Bob's proposal is, you know, what is the type of information within those 30 days? We think that the 30 days is a lot of time. But again, if we look at our process, and our requirements that we have, what is the nature of documentation required? It's going to be very difficult to put out within that period of time. The staff report, the same staff report that would go to

council, that's just too soon. But that's something that we can certainly look at as the BA project moves forward.

>> Ed Rast: I think Nanci had a comment and then Virginia. Was I out of order?

>> Virginia Holtz: Virginia Holtz. Noberto, recognizing that the agency is a completely stand-alone agency from the City of San José,.

>> Ed Rast: Virginia, could you speak a little louder?

>> Virginia Holtz: And it has much less requirements to follow the Brown Act in some instances, my question is or my comment is, is there lots of communication going on so that you -- that the agency understands that all of the material that we're going over in sunshine does -- that we are incorporating it both for the city and the redevelopment agency? And that there's ongoing communication between the city and the agency regarding what that might have? And I will be interested in having comments come back from the agency itself on a variety of topics in here.

>> Absolutely, Virginia. I mean, ever since this process started, the agency has been very clear that we are covered by this process and want to work with you. As the administration or the city side has been making their adjustments in the agenda process, and the timing of when materials need to be distributed, we are right on track with the city, modifying our reports accordingly. It's very clear that that's why we're here and that's why we're going to continue to work with the task force to make sure that we do what we have to do.

>> Virginia Holtz: Thank you.

>> Ed Rast: Nanci.

>> Nanci Williams: Nanci Williams. It peoples like to me we're over-correcting. I think when the project that got most people to think about sunshine was the grand prix. The matter was in the Mercury News on Monday and voted on Tuesday. There wasn't time to get a babysitter and go down to City Hall and look at the proposal. There was no time for that. To tell you the truth once you look at the deal, it probably wasn't that bad. It was the outrage of not having that opportunity that I think bothered people more than anything. So you know, starting with that, now we may be getting to a place where the city can't respond to anything and we'll never have a grand prix and I'm thinking in particular about a couple of examples. One is, you know, I know the city had an opportunity to have a marriage exhibition come to town, they had three weeks opportunity, and they turned them down, it required an investment of about a million dollars. Right now, the city doesn't respond to anything that has to be responded to quickly. I want my city to be more nimble than that. You mentioned the UA deal, you and I are intimately familiar with that deal William that's how we met. Anything in this memorandum would have prevented that from happening. If anything, the studies were done, there was an economic analysis, it may not have been a very good one. Regardless there was a contract with UA, that had them so tightly locked into that theater, that they had to move out at midnight in order to avoid the recourse in that contract. I don't think anything could have avoided a midnight move-out.

>> Ed Rast: Dave Zenker and Bob Brownstein.

>> Dave Zenker: Dave Zenker. It sounds like from what we're talking about, the task force, we get into a lot of areas where there's kind of where they touch in so many different departments that I think we need to focus, department by department here. I want to ask these questions related to redevelopment agency. It sounds to me like there's really two areas of contention, one is the time line, 30 days, and the other is the capacity to get this information available for a staff report. So I would ask you, first question would be how much would this 30-daytime line really change your world in the redevelopment agency, given all the negotiation that you do. And secondly, you know, what you've seen of Bob's proposal regarding the staff report, the cost-benefit analysis, you know, some folks have indicated the capacity

issue at the city and the inability to potentially come up with some of this information, what kind of change would would that be for you?

>> I think some of it will depend on the project. You know, there's a difference between a disposition of property or a sale of a property. Housing-related project and something like BA, for example, that we've worked on. I mean, these have different requirements. I think that for something like a BA project or for a firm that is you know, thinking of let's say moving out of San José and would like to stay in San José and they're looking to us for some assistance, I think the issue of the 30 days could make it difficult to respond in a timely fashion. Again, without having specific project in mind, I'm guessing, or I'm trying to analyze that we need to be ready to probably respond much, much sooner. Especially when it involves high-tech companies. We think that the 30-day period is a significant amount of time.

>> Ed Rast: Too much or too little?

>> Too much.

>> Dave Zenker: I guess the basis of my question is a lot of the work that we've done in so many different areas have been to really try to bring as much sunshine as we can, understand that government needs to continue to function and the city needs to continue to do it business. So unfortunately we've had to develop a lot of exemptions in a lot of areas for certain things. So I wanted to get a feel for you, given what you do all day long, you know, how much of this 30-day timeline is really going to impact all the deals you do.

>> I think the 30-day timeline is a little too long. I do think that again --

>> Dave Zenker: That actually wasn't my question. If I could get you back to given the whole scope of what the redevelopment agency does, the 30-daytime line, what percentage of those projects is that going to really impact?

>> To give you a good answer, I would really have to go back and look at specific projects.

>> Dave Zenker: If we would need to create an exemption, would I need to have an example of how often that would get used.

>> Would I have to do an inventory of project to give you a good solid answer on that.

>> Dave Zenker: The additional information in the staff report that apparently is not being provided now, what is your sense as to your capacity to provide that?

>> Again, I would -- I look at disposition and development agreements and the analysis that are required there. I've seen some of the information that we're putting together for the BA report to council. And I think some of that data is already included in the reports that we do.

>> Ed Rast: Bob Brownstein. Dave, are you finished?

>> Dave Zenker: Yes.

>> Ed Rast: Bob Brownstein.

>> Bob Brownstein: We have to, I think, be willing to decide whether we really want genuine public review of these projects or not. My organization does research and public policy analysis. I have people with master's degrees in economics who work for me. We can't review projects like this in five days or six days or ten days, particularly if we don't expect them to be coming, and suddenly we're given the full staff report, nobody can drop everything in order to be able to meet the City's time line. And that's a situation where I can give a staff member a direct order and say finish your project you're on as quickly as possible and get to work on BA or adobe or whatever it is that the City's working on. If we're talking about community groups and neighborhood organizations without paid staff, if we're working with volunteers, trying to get the group together to be able to look at a proposal, they have no realistic chance to give any review to these kinds of projects unless they have a significant amount of time. So if we aren't willing to make the time available, we may as well say we're going to trust in staff, and this is an area where

sunshine is not going to be real, and stakeholders are not going to have a meaningful role in making the decision. Now, I understand that the leadership of the redevelopment agency isn't here, that Harry had to be someplace else. So I'd like to make a suggestion. I'd like to make a suggestion that we adopt my proposal as a working document, so this is the proposal that the redevelopment agency will respond to. And then we can give Harry some time when he gets back into town to come back to us, and make any additional comments that he wants to. But what he's going to be commenting on is a proposal that conceptually and philosophically the task force is comfortable with.

>> Joan Rivas-Cosby: Joan Rivas-Cosby. I'm wondering if we could place a nonmonetary benefit.

>> Bob Brownstein: Let's put it in there and let's see how the agency responds to that. Those are the ones that are really tough in terms of getting an analysis. I think kinds of things I'm talking about can be done much quicker and less expensively than may have been implied. I'll agree to put it in as a cost-benefit analysis, qualitative variables and we'll see how the agency responds.

>> Ed Rast: Is the second comfortable with that amendment? We had a motion on the table, we had a amendment, then a second amendment. Is the second comfortable with that amendment? Dave Zenker -- sorry, Margie.

>> Margie Matthews: Apology for coming in late. What was the motion?

>> Ed Rast: Accept the document and we read the amendments back.

>> Margie Matthews: Is one amendment to consider noneconomic benefits?

>> Bob Brownstein: And the other amendment was to include on the list possible ways of meeting the hearing requirement, under number 2, commission review.

>> Margie Matthews: This is probably the fullest memo I've ever seen. It is just full of detail and recommendation. Just to mention one, a taxpayer review panel, this is the first I've heard of that. I'm willing to support a motion that will get some responses from the city and the redevelopment agency. But I'm not comfortable adopting this if that's word we're using. Because any given million dollars that the city spends is taxpayer money. So for some reason, this particular action, you know, could possibly go through all of these hoops and have a taxpayer panel. And I don't know why, exactly. Any million dollars that the City Council votes on is a million dollars to the taxpayers. And this seems to pull this public subsidy issue, which of course is, you know, has a lot of controversy, it's very glamorous, it's in the newspaper and there are a lot of stakeholders. But I think it's overdoing it. But I do want to hear, you know, what the city and the redevelopment agency, you know, how they could respond to this. But if the notion is to adopt it, I have to register my lack of comfort with that at this point.

>> Bob Brownstein: Just a clarification. My motion is to adopt it in concept which this is what the staff would be responding to. And just asking for questions on it, I would not consider that a friendly amendment.

>> Ed Rast: Dan McFadden and then Tom Manheim.

>> Dan McFadden: Dan McFadden, City Manager's office. Bob, in your introductory remarks, you said you were looking at special projects. Would those include labor contracts? Because of the amount of money --

>> Bob Brownstein: No. As I indicated several times, under this category we're talking about expenditures that are not directly for goods and services. We get services through our labor contracts, substantial services. We could be buying land, we could be buying fire trucks, we could be buying a building. All of those we get goods and services.

>> Ed Rast: Could you get closer to the microphone.

>> Bob Brownstein: Sorry. We don't get goods and services for these kinds of public subsidies. We get something very different. We get the movement of an economic institution or entity into San José and we

get externalities, economic effects of get externalities. Economic effects. Much harder to evaluate.

>> Could we hear from members of the public who took the time to come here tonight? I'd really like to hear from them.

>> Ed Rast: We haven't finished with the task force. Dan --

>> Dan McFadden: Trying to focus in on the specifics.

>> Ed Rast: Tom.

>> I wanted to reassure the task force that the city and the redevelopment agency is more than happy to respond to this. It's not necessary that it be adopted in any way to get responses and comments from the city and the redevelopment agency.

>> Ed Rast: Okay, then Nanci.

>> Nanci Williams: Again this is probably just semantics. But you're referring to these special projects as subsidized projects. I don't believe the UA theatre project was subsidized in any way. I don't know about the Hayes mansion but the grand prix, part of that was for goods and services, for police and infrastructure things, part of it was an investment, some amount of money, under \$1 million was to buy a sponsorship or some kind of cooperative marketing expenditure with the city and the grand prix to ensure they got the other benefits. If you broke down that deal I don't think it would break down anyway. The grand prix is one of the reasons why we're here so the people could have the opportunity to analyze that deal. But a subsidy, not very many of those kinds of deals come before the City Council, they're usually much more complex than that.

>> Bob Brownstein: Actually, UA got a \$6 million subsidy.

>> Nanci Williams: They hid it very well.

>> Ed Rast: Public comment, I guess seven cards, Tom fink. Two minutes, sir.

>> Good evening, my name is Tom fink. I'm a 50-year resident of downtown San José. I'm a retired VTA bus driver. I followed the discussion of the measure A funds over the last five years with intense interest. And over that period developed a keen appreciation for how important an issue trust is in the process. I've come here tonight to speak in support of Bob Brownstein's proposal for two reasons. One, I think that it broadens the scope of the cost-benefit analysis to include things like affordable housing and equality of jobs, I think that's absolutely critical. Cost benefit analyses are an important business tool but you know, the public institutions have a much -- have -- are answerable to a much bigger constituency than a business is. The second thing is the accountabilities piece of Bob's proposal. And I think that's really the key to the thing. Because if -- I think the grand prix really demonstrated how morning that is. That proposal came at the last minute and I couldn't help but feel that that was part of the strategy on the part of organizers of that race to come forward with a take-it-or-leave-it proposal. I just want to say that I appreciate the administrative difficulties that might be involved in this but I don't think that we should allow administrative difficulties to stand in the way of something that's far more precious than anything else for the long term good of public institutions and government, and that is, milk trust.

>> Ed Rast: Thank you. The next speaker is Efrian Coran. If I mispronounce your name, please correct me.

>> Yes, good evening, my name is Efraim Corier, I'm the chief of operations for Gardner family networks. We provide primarily care services to approximately 30,000 residents of the City of San José. And briefly, I'm just here to talk or in support of Bob's proposal Specifically as it relates to the impact on also say major employer, coming to the City of San José. And you know, I think it would be important to look at you know, the possible impact on the current providers as far as capacity is concerned, looking at issues as to whether the, you know, insurance is going to be provided, whether there's going to be more uninsured, you know, within the city, just to give you some you know, few tasks, we are seeing

approximately 15 to 20% increase in our number of uninsured, 9,000 uninsured residents right here in the City of San José. Once again, we're not a major -- we're a pretty good health care provider, we're at capacity already, so I think it would be important to have some sort of process that would look at the, you know, impact on once again the capacity. And you know, the supply. So thank you.

>> Ed Rast: Thank you. Next speaker is Janel Ishada.

>> Little shorter than the last speaker. My name is Janel Ishida, I am a downtown worker. Our schools are struggling, we're facing some severe problems. On the east side, one out of five student graduates, so in time when this is happening city resources are critical to complement what schools are struggling to survive. Youth rely on community centers, libraries, parks, after school programs, these are all essential services that are funded in our city. At the time of our challenge of limited amounts of funding we need to be sure that we continue to provide these services to our youth. We can't do this unless we make sure that our money is being spent wisely which is what Bob's proposal is all about and why we're here today in support of this proposal. We can't afford to waste our resources on things without return to the community. When a large amount of our tax dollars are being given away, we need to compare which projects is going to generate the best return to the community. Do we get the housing and the tax revenue that has been promised to us? The public has the right to know exactly what we're getting for our money. Money that could be going to the services that the youth needs in order to make the city and the economy a vital and prosperous future. So thank you and I truly support this common sense reasonable proposal to create more integrity in the city process around these subsidies. Thank you.

>> Ed Rast: All right, thank you. Arisa Sanchez.

>> My name is Aurelia Sanchez, I've been a downtown resident for the past 28 years. I'm here to support Bob's proposal. One thing Bob is saying is honesty in government, honesty with the subsidies, with the companies we're dealing with. Some of the points brought up, it would create more work. Let me tell you, once the public starts scrutinizing the subsidies maybe you wouldn't have as many applications. Redevelopment that is only so much money. One of the details that brought me here was the BEA project. You know what I think the city went to a gun fight and took a knife. This thing here really needs to be studied. We are going to give 13 million and the city says we're going to get a return of 32 million. Well you subtract 13 million from 32, that means a little bit more minus there. Not only that we're into a contract into the year 2038. We're forced to lease a floor, 30,000 square feet probably at \$3 a square foot up until the year 2038. So you guys do the math. You're all smart. Again, we're doing subtraction. Not only that we're going to be forced to pay additional parking, not additional parking but parking that this company has, whether we're using it or not, on weekends and holidays. Again, do the math. So what I'm saying is that Bob is asking for honesty. You're all here waisting your time. -- donating your time. I know you're all working hard. So let's do something, I mean, really, I mean, I respect everything you're all doing. But all as the public we're asking is that people be -- that the government be accountable to the people. That's all I have to say. And I'm sorry, you guys are all doing a great job. Especially Bob.

>> Ed Rast: All right, thank you. Jaime Alvarado. He spoke already. Norm francs.

>> I'm the senior policy director on land use issues and we really appreciate the discussion you're having today, one that should be taking place in City Councils all across the country. Economic development is a serious issue. The Sierra Club has been looking at this issue for decades because we're concerned that economic development practices have an impact whether we have poverty and whether we have all of the associated environmental ills that are associated Wednesday that and good economic development practices can actually help alleviate those problems. The challenge we have is that there's been a explosive use of public projects over the past couple of decades. If you look at that time response, there

is very little accountability. This is not just a problem for San José, this is actually a nationwide problem. And it has a -- it -- these subsidies compete with the kinds of investments that actually we know actually deliver returns for the public. Investments in infrastructure, investments in workforce development, et cetera. And when we steal from those programs that are proven, in return for making investments in private projects without knowing what the actual return will be, we really do ourselves a disservice. Now, everybody in the room understands that if you have a management objective, if you're a company, private enterprise, you're not measuring results, no company in the country actually manages without very carefully measuring their results and holding their managers accountable for meeting goals. And it makes sense for us to actually work with the same philosophy in the public realm. Thank you much.

>> Ed Rast: Thank you. Brian Schmidt.

>> I'm sorry, I wanted to be in the next item, the public information item, item 5.

>> Ed Rast: The other speaker, Robert Lindsay, reform on public process? Or is this on --

>> On the item that you're currently considering, the proposal by Mr. Bob Brownstein. I'm Robert Lindley, I'm a delegate to the South Bay labor council. I'm concerned because this body seems to be being stone walled by city staff. This body is attempt hing to bring another party to the table, to be able to analyze some of these proposals, and make recommendations to the council, and we have the city staff saying, we don't have the time, we don't have the staff, we don't have the ability to analyze all of these projects so there would be enough time for public to come in and make its evaluation on a reasonable basis as to the projects that the public funds are being spent for. This disturbs me. We have the agencies, the people that have messed up these things, who are saying, well, we can't do anything different. We'll just let you know what we always have in the past, and you have such things as the race. There was an article in the paper in the last couple of weeks, saying that analyzing events and the return on investment, the grand prix shows very poor in comparison to other events like the jazz festival, the tapestry and talent which requires small investment on the part of the city, and produce fairly large return. And without a lot of the inconvenience that the grand prix provided. I don't see why the city staff would have so much trouble responding to this. They've had this since sometime in December.

>> Ed Rast: Thank you. Next speaker is Mark Fife.

>> My name is Mark Fife, I'm here as a concerned citizen, public activist, community activist, and I would say that I'm not familiar with all the policy minutiae, all the back dealings of what goes on here at City Hall, and I feel that that is a problem for the general public, I would think, that doesn't have the time to focus specifically on issues, on important issues such as this policy proposal that Bob has here today. But I feel anything, anything that sheds more light on how the community's money, the taxpayers' money is being spent is a good thing that we need more of, not just that the point has been made by a few other speakers and thought just at city level, but county, state, federal level, all the way across the board. And I don't think Bob's proposal, from what I've seen on the highlights here on the overheads, it does appear to be -- it does appear to me that the redevelopment agency is saying well, we don't have time and it will be too expensive and blah blah blah blah blah, just trust us. That hasn't cut it in public policy that I've seen over the past six years anyway. So I'm in full support of -- and I don't think Bob is being unreasonable, so the city business doesn't get bogged down. But I definitely think that there needs to be an investment between what the city makes -- balance between what the city makes and subsidies to private entities of which the returns may or may not be perceived or real. Thank you.

>> Ed Rast: Thank you. Do we have any additional speakers on this topic? Will the speaker step forward? Bill Leninger.

>> Good evening. I'm father Bill Leninger, I'm representing the diocese of San José. And I've been at the

City Hall for so many years, campaigning mostly for the working people in San José. Now, that's my main concern, is living wage and benefits and how these people are going to live. And I've had fights for so many years with my brother, who spent 27 years on redevelopment, on every building in the City of San José, on why are you doing that? And always he'd have an answer for me but it was always his answer and what he did in the background. And I never got to first base. But things were done and things got progressed and we have a city, we have a downtown. I always felt that some way I got left out. So in the middle of all this I recognized that you're right. Staff is going to have a terrible time trying to keep up with this and doing it. But if we're going to have a city that stands on values and budget items are a moral issue, they're an ethical issue, their a theological issue. It's why I come to these things, that I know unless we promote those values for our city and our people that we're going to constantly go along, one more issue, we don't have time to do it, we'll get it done somehow, ultimately we'll spend a lot of money without consideration what it has to do with the people we are most concerned with of all, those are the people that are underprivileged in our city. I'm hoping that proposal will promote that and the staff won't get killed in the process.

>> Ed Rast: Thank you for the comments. Task force members, do we have additional comments?

>> Dan Pulcrano: Yes, I have a comment.

>> Ed Rast: Dan Pulcrano.

>> Dan Pulcrano: Thank you Bob for the thought you put in this memo. Sunshine will definitely improve the process and I'm hopeful that staff can come up with a set of recommendations on this that are implementable. As we've heard from the speakers tonight. I'm a bit concerned just on a pragmatic level because we've run over half an hour on this item, and we still have to get through public information. And I know that staff wants to respond to it. I think we need to finish this discussion, I think we should probably allocate sufficient time to discuss it. Would it be possible to table this, Ed, and get through the public information portion and then come back to this and give staff the time to respond to it?

>> Ed Rast: We can do that but I think we have a motion on the table right now. We would have to have the motion either voted up or down or withdrawn.

>> Bob Brownstein: It's my understanding that staff at least at the redevelopment level wants the opportunity to discuss with the director of the redevelopment agency, what the appropriate response would be. He's not here right now. So I think it's useful to move forward with the motion and approve the proposal in concept and the redevelopment agency will know what they have to respond to.

>> Ed Rast: Dave Zenker.

>> Dave Zenker: Dave Zenker. Other than redevelopment agency what other departments would this touch?

>> Dan McFadden: Dan McFadden. We'll respond across the board, sorry I got a little touchy. We'll try to come back with a project that is implementable as Dan mentioned. Thank you.

>> Ed Rast: Let me make some comments, as I said earlier, Ken Podgorsek was not here to comment, I'm going to make some comments for Ken or at least from the neighborhood point of view. I think the concept of doing the same things we've done in the past and expecting results is not going to work. We are going to need to take a look in the next four or five years when we'll have tremendous budget shortages, is where we're spending our money. I think it's very reasonable to have justification for the departments -- city departments. What will it cost and the staff numbers. What I've heard tonight personally is I've heard that nobody knows. I know I worked for a number of years in merger acquisition work and as we did, the first kind we did a couple of acquisitions it took us weeks and months to pull the numbers together. After we got that one each time after that the numbers got faster and faster to the point where we basically loaded it in a computer system, plugged the numbers up and did it. My observation

looking, and I'm probably most familiar with the city budgets from a neighborhoods point of view, both from a redevelopment budget, I've analyzed that, and the city budget, I helped put together the city's budget 101 course, there are only a limited number of these projects. Once they get the process down they'll do it faster. From the task force point of view, the whole sunshine ordinance is a pilot project. I think to go ahead and approve this makes perfect sense. The staff will come back. We have, in the past, when the staff had significant objections, made accommodations. That says we're trying to work with the city on these particular things. I think at the same time, we need accountability on these particular topics. Virginia.

>> Virginia Holtz: I have two comments. One is that it seems to me that having good analysis of these projects will back up the City Council's decision making and will give them the tools they need to make, number one, good decisions, but also, to reduce the complaints of the -- of the community at a whole. Because they have good information when they make the decision about these projects. Secondly, there was a concern expressed by the redevelopment agency about having in-house staff working at the analysis. And I'm going to throw out, just as a brainstorming idea, this might be really screwy but I'll put it out there. The city might possibly consider having additional staff in the auditor's department, that is a separate department that could -- that has the skill to do analysis for projects like this. So that's just something I'm just throwing it out there. Thank you.

>> Ed Rast: Any additional comments? Tom Manheim.

>> Tom Manheim: Tom Manheim from the City Manager's office. I wanted to clarify a couple of things on your motion, Bob. You had mentioned in your comments that an appropriate group to evaluate this might be council committees. I notice that's not included in your language here.

>> Bob Brownstein: Correct.

>> Tom Manheim: Is that included in the motion?

>> Bob Brownstein: Yes, it is.

>> Tom Manheim: You specifically said, this is not for goods and services. That is not spelled out but I assume that is incorporated?

>> Bob Brownstein: That's correct.

>> Tom Manheim: Thank you.

>> Ed Rast: Do we have any further discussion? We have a motion on the table. Lee Price would you read the motion with the amendments? We have two amendments. I'm sorry.

>> The Clerk: The motion made by Bob Brownstein, seconded by Bobbie Fischler, was to adopt in concept Mr. Brownstein's proposal as amendment which includes an item added under 3.1, cost benefit analysis to include some qualitative analysis i.e. nonmonetary amendments, was there a second amendment only the clarification that representation number 2 would also include a possible referral to council committee.

>> Ed Rast: And commissions.

>> The Clerk: And commissions, correct.

>> I have a question. Are we voting basically that we want to develop a process to review these, or are we voting to, in concept, approve the specifics of every step of this? The report, you know, when I hear in concept approval, Bob, I love the idea of sunshining these things, the 30-day wait. I think that's terrific. I don't want to set up a whole other government bureaucracy, I don't necessarily buy the idea that we need a new commission, that we're setting up a whole level of red tape, that we're approving in concept approval, what does in concept approval mean?

>> Bob Brownstein: In concept approval mean means we agree with the draft amend that I've created, the specific things that have been included in this memo. I certainly expect one of the things they'll come

back with a comment on is that they probably have a preference in terms of which of these bodies is going to be doing the review, as opposed to which other one. And I'm comfortable with hearing what they have to say about that.

>> Dan Pulcrano: So let me just understand this. If you're saying that this is a staff referral of this proposal, for comment, I will support the motion. But if we're saying that we approve this whole idea in concept, without you know, the opportunity to really refine this concept before sending to council, then I can't support it. So which is it?

>> Bob Brownstein: Well, the motion is to approve it in concept. That means, if the staff doesn't have any problems with parts of it, we've approved that in concept. When the staff comes back I suppose we could still talk about it. But basically we're saying, this is the direction we want to go in.

>> Dan Pulcrano: Every point on here including setting up of a new commission?

>> For clarification, my recommendation was not that we set up a new commission but there are existing commissions that would be one of the stakeholders that we could utilize.

>> Bob Brownstein: Let me clarify that then. What number 2 says is, there should be some entity that gets the duty to do specific scrutiny of this project before it goes to the full council. That could be a commission, it could be a citizen panel. It could be a regular committee of the council. It could be a study session of the council. I -- it is my expectation that by the time we finish with this, we'll have selected probably one of those or maybe one or two. But it's not going to be the laundry list. But right now we're saying that we want some entity like that from that group to get that role.

>> Dan Pulcrano: I'm still unclear.

>> Ed Rast: Let me see if I can get to some sort of common agreement between the two of you and thus the rest of the task force. We are approving this in concept, asking the staff to evaluate where it does and does not work, we'll agendize this at a later point in time to make any necessary modifications. Isn't that where we are?

>> Isn't that like a contradiction, we're saying we approve this in concept but we're not approving them in concept.

>> Ed Rast: I don't mean to argue but we've approved a lot of thing in concept. If you don't put specifics out we're not going to get a good response back. Otherwise you're going to have all this fuzziness around the edges of it.

>> Joan Rivas-Cosby: Joan Rivas-Cosby. My understanding is that beginning with item 3, it would be subitems 1, 2 and 3 that would ask to be in the proposal. So not necessarily a bullet point. But I'm suggesting that as Bob said, that staff could put in more if they want but Bob is saying that these are the kind of things that the public should know that there should be sunshine. And I think the part as for their input is for staff to come back and say for an example okay, we don't have enough information to say there's going to be an impact on neighborhoods.

>> Dan Pulcrano: And maybe if Bob were to incorporate what you just said into the memo I'd have an easier time supporting it. I'm in favor sunshining the subsidies, in favor of better staff analysis, absolutely. As far as how that's accomplished you have a very good proposal here. But I think there needs to be a chance to refine this before we say okay, we're approving every concept. If you come back to the commission I'll support it.

>> Bob Brownstein: It is any expectation staff will not approve of this in its entirety, what I'm not willing to say is okay, we have a general desire that we'd like to apply sunshine to subsidies. That's where we were four months ago. I've done a lot of work to get us beyond that. It's the work beyond that that I want us to be saying we approve in concept and we want to get an answer from staff.

>> Ed Rast: Paul Krutko.

>> Paul Krutko. What I can suggest is that we were responding in terms of the work that Colin O'Meara did, that is what we were tasked to do. The staff put a team together, we responded to that. The team is still intact. Sheila did some analysis in the last week where she took Mr. Brownstein's proposal, compared it to the work we did and identified the things that we had not responded to. So I think the approach that we will take at the staff is to take the proposal and analyze it and bring it back. And so we're all prepared to do that. We're organized to do that. We have a number of bodies of department heads that do that work on a regular basis. So we're ready to take the referral and bring it back to the task force at the earliest opportunity.

>> Ed Rast: Do you have any item when that is approximately, month, month and a half?

>> We can do this in 30 days.

>> Ed Rast: Bring it back 30 days, plus or minus?

>> I may be being overly ambitious --

>> We're on a very tight schedule. We'll try to get it back here another the first -- first meeting of next month.

>> Ed Rast: Okay, great.

>> Dan Pulcrano: I'll support the motion on the understanding that we are simply referring the general concept to staff and that it is going to come back with a set of recommendations. I can support that.

>> Bob Brownstein: Look, from my perspective, we were at the general concept phase four months ago. This is a much more specific concept. I would love to have your support. But if you're not willing to support it, I can live with that. But I don't want to take all the work that's been done and have it disappear and have staff responding to something that is purely generic. This motion is that this specific proposal would be approved in concept with staff to comment on.

>> Ed Rast: Margie.

>> Margie Matthews: I'm willing to support it. The word concept is the conceptual approval. I'm real curious to see how staff responds to this. I hope that most of it can be supported by staff but I know we're going to have another very long discussion about it. I'd rather move along and have the vote.

>> Ed Rast: Karl.

>> Karl Hoffower: Karl Hoffower. Is it your intention that if someone on staff says this one's okay that that would go ahead to the City Council?

>> Bob Brownstein: It's going to be on our agenda. We can still talk about it.

>> Karl Hoffower: If we can still talk about it --

>> Ed Rast: Before we send it to City Council, we will look at whatever somebody has a comment on. If we have the whole ordinance put together, if maybe at that point in time staff has more concerns, our intent is to make a workable ordinance, something that's sunshine but is workable. I think we have a motion on the table. Is there any question on the motion? All in favor? [ayes]

>> Ed Rast: Opposed?

>> Dan Pulcrano: I'm opposed.

>> Ed Rast: I missed the third -- okay, so we have two all right so the motion passes. And we want to thank the public for their comments and attendance. But you're welcome to stay. Remind you there's a validation medicine in the hallway if you haven't validated. Next item is wrap-up of public information. Dave. Dave Zenker.

>> Dave Zenker: That would be me. So just to kind of bring you up to speed and remind you where we left off. We were discussing calendars, calendar disclosure of certain officials. We -- if you have the public information second section recommendations document is probably the best one to work from. And you also need the document from Mr. Brownstein on exemptions to release of information. Get to that here

shortly.

>> Ed Rast: Dave, can you get a little closer?

>> Dave Zenker: Okay, we discussed frequency and we all agreed unanimously that the calendars would be disclosed on Monday noon for the previous seven days. We discussed content and we pretty much came to consensus that calendar content should also include the names, the title, of that person, if applicable, their organization and issues being discussed. Which I think is a little bit up for debate tonight. We discussed the notion of unscheduled meetings or impromptu business, and I think we generally came to conclusion that we would write some type of language that said officials are encouraged to record unscheduled contact of a material nature with interested parties in a matter coming before the policy body in which the matter under consideration is discussed. I'll let the lawyers write it but ultimately the idea was that we would establish an honor code for them to document contacts they had that were not previously scheduled, but that resulted in substantial discussion of city business. So unless there is anything that anybody wants to discuss under any of those topics, I'm going to move on to the exemption section. Sound good? All right. The subcommittee originally discussed the potential of a couple of different types of exemptions. I think where everybody agrees, city officials should have the right to exclude purely social, personal events as personal activities. So those could be marked as private, or redacted from the calendars before they're disclosed. And ultimately the San Francisco ordinance does provide a definition of that which we've provided for you in the memo. The Milpitas ordinance, I don't believe uses the same definition, but -- stand by -- the Milpitas ordinance does not use a definition of what personal business is. Our recommendation is to go with the San Francisco language there. And then under other exemptions we've had a custom proposals with regard to private or proprietary business, meaning that in the event that a city official was having discussions that they felt would somehow put the city in harmful situation by disclosing that information, a couple of examples that we gave there were corporate recruiting and retention, whistle blower issues, complaint confidentiality, Mr. Brownstein has a memo out on whistle blower, complaint confidentiality. Neither the San Francisco ordinance or the Milpitas ordinance allow for any confidentiality. We would be the first city that would go so far to allow for whistle blower or proprietary business type of exemptions. I guess I would leave that for discussion and open it up.

>> Ed Rast: Did you, let's see, the other committee members wanted to comment? No? Everybody's fine with it?

>> Dave Zenker: I think, let me just -- I'll start. I think there's two ways to go with this. One is to limit the amount of information that they have to actually disclose on their calendar. So if they indicate the name and date and title of the person but not the content that's being discussed I think we solved the issue on that, we wouldn't have to allow for any exemptions. Ultimately you've got to ask yourself what are we trying to achieve in having public sector disclose their calendars. I don't know. I think you know, ultimately one of my concerns I suppose in getting into the content portion of this, is that's going to take a significantly more amount of oversight for a meeting planner to be able to accurately describe the type of meeting that occurred, versus name, title, organization. To me, that falls within the capacity of a meeting planner. For us to ask city staff to go a step further and describe the content of a meeting when they weren't necessarily party to it would be difficult. Ultimately the question before the task force is what level of content do we want described on the calendar, if we don't want much content, then why discuss the issue of exemptions in the first place?

>> Virginia Holtz: When you call a council office now and ask for an appointment, the council staff generally says "and what is this regarding?" So that it's right there, they put your name down, they -- and if you're identified with an organization, they put that down because you identify yourself, and they ask

you what you want to talk to the councilperson about. So to me that isn't a significant barrier, and I'm personally interested in what the issues are and the subjects of what people are talking to them about.

>> Ed Rast: Joan.

>> Joan Rivas-Cosby: Joan Rivas-Cosby. Actually Dave, I agree with Virginia. In my other life I act as a scheduler for an executive. I post his calendar every day not because of any Brown Act provisions, it's because people want to know where he is. And there are times personal doctor's appointments, nobody's business, confidential employee interviews, do not want people to know that, you find a way to put it. Appointment with potential employment candidate. If it's someone who doesn't want to hide, yes, put their name, interview with so-and-so. As Virginia says, you don't go into an appointment with a councilmember blind. Somebody knows who it is. If it's confidential, a confidential employee interview or candidate interview kind of falls under that business.

>> Dave Zenker: Don't get me wrong. I'm not suggesting people wouldn't come into their meetings not knowing the subject matter. I'm talking about what would get disclosed on the calendars.

>> Ed Rast: Bob Brownstein.

>> Bob Brownstein: Let me make a couple of comments here. I'm not sure really what public policy goal is really advanced by having people keep track of names in a calendar and nothing but the names. The idea of making the calendar public is so, I mean, whether people agree with that or not, the whole point of making the calendar public is so that people will know whether councilmembers are meeting with different organizations, constituencies, groups, things coming up for public debate or decision. Oat wise, individuals who are monitoring the calendar, have to do a tremendous amount of work, maybe having to come to an insoluble task, who is Dave Williams?

>> Dave Zenker: We agreed that the name of person or the organization they represent would be part of the requirement. So really what we're talking about I think is to me what becomes a much more gray area, how to capture in as few words as upon what the content of that meeting was. And does that open up other issues to how accurate it was, does that -- does that potentially solve or complicate or --

>> Bob Brownstein: We're trying to give the person reviewing the calendar half a loaf, so they know that Councilmember met with a person from -- who's a Real Estate person from BA. But they don't know whether the meeting was about trying to garner support for the investment downtown, or whether it was for some other kind of project. It gives the person reviewing the calendar more information than just the name but certainly not -- it doesn't make it easy for the person who is reviewing the calendar of figuring out who was impacting the decision-making process from accomplishing that goal. My inclination would be that at least some minimal information about the content of the meeting advances the whole public purpose for having the calendar made public in the first place. And I say that recognizing that that does create problems in terms of the issue that I've raised, which is people who have a legitimate concern for anonymity. I think actually in a difficult balancing test determination here, we're e-better served by having some additional information in the vast majority of cases where there is no threat of retaliation, and people provide at least some information about what the meeting was about, but that we do provide exemptions for what I think will be a relative small number of cases, where the person has a legitimate basis for fearing some kind of retaliation.

>> Dave Zenker: I think we do have suggested language on content, which says for meetings, and I'm fine with that, by the way, I threw that notion out, as potentially a way to go, to solve the whole idea before we get into this long, drawn out discussion about exemptions. Do we really need to disclose content. If we've got names, titles of the organization, and so given that, we'd have language on content that says for meetings not otherwise publicly noticed and recorded the calendar shall include a general statement of issues discussed.

>> Ed Rast: Joan.

>> Joan Rivas-Cosby: Joan Rivas-Cosby. I'm sorry if I wasn't clear before. What I meant when a person requests an appointment it is generally a short succinct statement. It would be enough in Bob's example the Real Estate VP from BEA wants to discuss a potential partnership. I think it can be vague as long as it speaks to the actual subject of the meeting.

>> Dave Zenker: Okay. Before we go any farther I just want to remind everybody that we're recommending that this ordinance apply to 43 city officials. So we're not just thinking the City Council, the mayor. I mean, there's 43 city officials here that this would apply to. So let's keep that in mind I guess as we talk about the scope.

>> Ed Rast: Did you talk about when the committee met, you made a recommendation on the Web publishing that --

>> Dave Zenker: We aren't quite on that, I was going to say that when we talk about exemptions.

>> Ed Rast: Bob Brownstein.

>> Bob Brownstein: We've moved forward on the content part, let me make a few comments about the memo I provided regarding exemptions. There's two kinds of exemptions that I've discussed. One is relatively straightforward whistle blowers, somebody who is bringing to the attention of the council a violation ever ethics or something like that. Under those circumstances, it is in the interest of the public to provide those people with some level of protection so they will not feel like they have to put themselves at risk in order to report something that they feel has happened. The second category I recognize is a much broader one, because it essentially includes anyone who fears retaliation. But I can't find another way to express that, to accomplish the goal that I want to bring forward, which is essentially the goal that is very well expressed by Supreme Court justice Stevens and McIntire. To protect unpopular individuals from retaliation, and their ideas suppressed from an intolerant society. The fact is, we aren't in a pure and perfect world yet. People are subjected to a whole variety of kinds of abuse and retaliation, because they dare to make their ideas, put their ideas out there and there are ones that other people strongly disagree with. And although we're all familiar with political movements with hundreds of thousands of people watching in the streets, in almost every case, those started with one or two people who wanted to raise the issue and did so with extraordinary risk and with great vulnerability. And to the extent that those people want to take the first steps to bring the very unpopular idea forward and communicate that to their elected officials and do that without immediately taking the risk of retaliation from an intolerant society, I think the public is served by giving them that kind of protection. I'm not so much worried that this somewhat open exemption is going to be abused, because I think this whole calendar arrangement in its heart is an honor system. Unless we put them under 24-7 surveillance which I don't think anybody is recommending, anybody who really wants to have a secret meeting can have a secret meeting off calendar and nobody's going to know about it. And I think people would raise questions if some elected official or city official started to leave very large chunk of their calendar. The vast majority of cases would be used honorably, because we're using honor to make this work. Talk too elected officials and do so without experiencing personal risk.

>> Ed Rast: Dan.

>> Dan Pulcrano: I'd like to place a motion on the floor that we accept the recommendation of the public information subcommittee.

>> Ed Rast: We haven't finished discussing.

>> Dan Pulcrano: Okay, when we finish --

>> That was good. [simultaneous speech]

>> Dave Zenker: You got dinner plans tonight or something?

>> Ed Rast: All right, Dave, go ahead, continue.

>> Dave Zenker: Okay, well, ultimately you know, the exemptions that have been proposed so far are obviously personal activities, attorney-client privilege, whistle blower, I don't know if we want to create a broad category of what we'd call proprietary business that you know, would be another catch all for everything else that a councilmember thought they wanted to not disclose.

>> Virginia Holtz: Virginia Holtz. I think it's important that we have that particular paragraph in there because that relates to a completely different aspect of the exemptions. So I would support that.

>> Ed Rast: Let me ask a question to Lisa. On Bob Brownstein's recommendation number 2, it says, let's see, memo indicating the reason for the exemption, the City Attorney prepare to the meeting. Is that, has the City Attorney's office looked at that?

>> Lisa Herrick: Lisa Herrick. I actually looked at this earlier today and I haven't had a chance to discuss it with any of my colleagues. It's an interesting concept, lays out a procedure that we would want to discuss. One question I had initially was whether or not that disclosure actually took place before the meeting. I don't know if there would be some instances in which someone might meet with a councilmember. And the councilmember would not know until the time of the meeting that there was this fear. So that was one -- one question I had. But I certainly will discuss this with my colleagues.

>> Ed Rast: Do we have other comments from the task force? We have a public comment? I'm sorry, Karl.

>> Karl Hoffower: Karl Hoffower. I just was curious if anyone had experienced how often do we have people in a whistle blower position coming forward? How often did you have someone speak to you that would be a, "whistle blower"?

>> Margie Matthews: I was aware of certain with whistle blowers. This would discourage or have a chilling effect --

>> Dave Zenker: Even if there was an exemption?

>> Margie Matthews: Maybe I'll just state, I'm voting against the whole calendar thing. I can't comprehend. I was stalked, this person came to my home, stalked me. The public had the right to know every move they met, what they were talking about is too weird for me to vote for. We're trying to get ordinary citizens, you know, contribute their time towards public service to be representatives of the people. They're supposed to be out of the neighborhoods, out of the city. They're not pros? You know, they're not adept at being bureaucrats. To have this sort of weirdness, I can't even imagine it in practice. What you're going to have is a bunch of you know, written material so that political opponents can mine it, and twist it, and turn it into, you know, campaign documents, and you'll have newspaper exposés, tracking people and saying, look who they're meeting with or look who they're not meeting with, how come they're not doing this, how come there are so many blank spaces, if anything could discourage a person from running for elected office, it's this item. Turning someone into a memo producing crafty per, it is human nature to have freedom and spontaneity, it's too weird, I can't vote for it.

>> Ed Rast: Nanci, Dave, Bob.

>> Nanci Williams: I understand what you're saying, Margie, I think those are really good points. Shouldn't we be looking at the meetings that we care about? If they're meeting with a lobbyist, we want to know who the lobbyists are meeting with on a regular basis, and on whose behalf. And then the other thing I was a little concerned about just in looking at the exemptions, it seems to me if the City Attorney is the attorney for the city, are there any meetings they would have that would not fall under attorney-client privilege? They're either talking on behalf of the city or about the city. I'm not -- fall under that exemption and then I think we talked at one of our real early meetings and we may have changed our mind and I wasn't here. But the City Auditor, that is what they do, audit the city. They're talking the whistle blowers,

talking to people with a certain amount of anonymity. The number of exemptions exceed the number of allowable incidents that would appear on a calendar.

>> Ed Rast: Dave Zenker.

>> Dave Zenker: I appreciate your remarks Margie because certainly you have lived and breathed, you know, living this. And I appreciate you putting in your two cents. I want to make sure that everybody understands the calendars are disclosed after the fact. And you know, so that there should not be a safety issue, hopefully in anybody's mind anymore. With regard to the kind of the weirdness that you're picking up here, I do want to point out that you know, City of San Francisco and Milpitas have been doing this for a while. They don't have any exemptions in their ordinances. From what we've been told there has been no down side to the publishing of the calendars. Our own mayor and City Council have been publishing their calendars on a monthly basis. If anything, it strengthens the reporting they've been doing with regard to who they have been meeting with. The first couple of times we reported to councilmembers that said they had a full blank day, they said well, I'm out meeting with constituents, since then, I think they see this as a challenge to prove to their constituency. I actually think that council is you know, certainly, correct me if I'm wrong, they're pretty proud putting their calendars out these days given the parameters we've put around there.

>> Margie Matthews: When I was City Council, my calendar was public information, everything we touched was public information, that was our philosophy, including the calendar. But as far as laying down all these detailed, I mean it practically makes it a crime if you don't do your calendar exactly what this is here, who did you meet with, what did you talk about and you know, a person has to have some feeling that they are in control of their own lives and there's an opportunity for spontaneity. A councilmember's job is 24-7. You go to Safeway, and you're having four meetings right there. Who did I talk to, what did we talk about? It becomes unreal after a while.

>> Dave Zenker: I think we have to disagree. We went around the block on that one. We're trying to create the language for this section to be as reasonable as possible so that it really is a strong suggestion that they follow an honor code of disclosure. And that they disclose substantial discussions that resulted in potentially changing their mind about a vote or something like that. We graduated it around from our fishes initial discussions to something that is much more needy now than what we started with. So I really do. I think when this gets to council at least from my perspective and the rest of the subcommittee's perspective, the ultimate intent of who are they meeting with, on what issues, on public time.

>> Ed Rast: Bob Brownstein.

>> Bob Brownstein: To try to respond to the comment, encountered whistle blowers several times a year. That's roughly, you know, didn't show up once a week, but you know, in a year you'll probably run into several. And if you sort of know somebody cares about that, you probably run into more than that, a little bit more than that.

>> Ed Rast: Tom Manheim then public comment.

>> Tom Manheim: Tom Manheim City Manager's office. The city has established a hot line that goes to the employee relations office where people who are concerned about reporting something and are concerned about retaliation can report things anonymously. So I don't know how that has affected the number of people who still might be going to council offices but that is a change. Also, the City Council last week, I believe, adopted a policy that councilmembers will report any contacts with lobbyists before they actually take up an item at the City Council meeting. So on the issue of meetings with lobbyists, that will be something that you'll hear councilmembers talking about going forward, if there have been any meetings. The final thing I just wanted to mention is on the San Francisco Milpitas ordinances, while it is true that they have similar calendaring requirements, the only things that are shown online are their public

events calendars. It is true, as Margie said, calendars are public, that is part of the task force recommendation regarding most of those 46 people, they would be required to keep a calendar, which we do now, that those would be public documents, and they are.

>> Ed Rast: James Chadwick.

>> James Chadwick, thank you. I wanted to address a couple of structural points about the recommendations with respect to public information calendars in particular. First, I don't see among the recommendations the requirement that's reflected in both the San Francisco and Milpitas ordinance. I'm sorry it's a recommendation. There will developmentally be a requirement that they maintain these calendars and that the calendars contain certain kinds of evidence. Disclosing certain types of meetings, separate the disclosure of information just about the location, time, and participants in the meeting. And make that information routinely available. But permit exemptions with respect to the content of the meeting, the subject of the meeting. If the subject of the meeting is a complaint about illegal action, that that can be addressed by not simply eliminating the entire meeting from the calendar, but by not disclosing what the subject of the meeting was. I have a concern about exempting any meeting in which a person expresses a fear of retaliation. The vice president of DEA, people are going to stalk me and they're going to hate me because I'm getting a \$13 million settlement. If I saw a good way to distinguish that, I might be more sympathetic to that consideration. But I don't see how you can address that in a way that doesn't create a sort of boundless exemption for anybody who says don't disclose this, don't disclose this meeting. I would point out, and I think the point's been made, that this is -- it's been implemented elsewhere. I'm not aware of anybody that's raised a concern about it. The governor of the state of California is now routinely revealing his calendars. It's not a prospective calendar. It's only after-the-fact. And so you only find out about it after it happened. It is important because it shows you real patterns, who does this councilmember meet with, the representative of the community or always the environmentalist, or the chamber of commerce? You can learn a lot about what's going into a person's decision making by who they meet with so it really does serve the public interest.

>> Ed Rast: Tom Manheim.

>> Tom Manheim: Tom Manheim. Mr. Chadwick's comments reminded me of something I wanted to say earlier. I would argue that the value of withholding the content, but revealing the name, both in the case of people who are concerned about retaliation, or in the case of where there may be some advance meetings about trying to retain corporations, something like that, the names are as frequently as good as revealing the content. So I would -- I think that as you think about exemptions, you need to think about just exemptions, and not trying to parse that. Because in many cases it would not protect the person.

>> Ed Rast: Bob Brownstein.

>> Bob Brownstein: I understand the problem that in Chadwick is raising. I struggled long and hard, trying to find a way to objectively define what was legitimate request for protection against retaliation and what wasn't, and I couldn't figure it out and I'm a pretty good wordsmith. I just couldn't figure it out. So I fell back on essentially the MacIntire standard which is the standard of the MacIntire case, the person who is scared is the judge of whether there is legitimate fear of retaliation or not. The only qualifiers, is they're not inconsequential qualifiers, they would have to convince the City Council member, and the city attorney's office, that there was a legitimate basis for granting them the protection of anonymity. San José that is totally noncredible, presumably not the City Council member nor the city attorney's office would agree to that. And although I presented the citations from the Supreme Court cases for reasons of philosophical discussions rather than legal analysis, probably if we go forward in this direction, my desire that there be protection for anonymous communication was not accepted by the commission, we probably would want our council to look at see whether MacIntire is binding in this kind of situation.

>> Ed Rast: Dan McFadden.

>> Dan McFadden: Dan McFadden, City Manager's office. I wanted to go back to something that.

>> Margie Matthews: Said. It is not a good thing to treat people you've elected to public office as if you mistrust them and that you have to have a checklist. I don't agree with Mr. Chadwick here, when you get into specifics, telling people what they have to do with their calendar. I don't think it's good policy. So you know, I -- I think people are going to use their own good judgment on this, and I think you're going to get a better product and a better sense of openness and a better sense of sunshine if you don't try to nail down every little bit of this. So that's my editorial comment.

>> Ed Rast: Dan, you've looked over this proposal. Are you generally comfortable with what's in there?

>> Dan McFadden: I think I am generally. As a pilot project there will be some discussion there. But I think you need to let the elected members have some discretion. If you were in this process you'd want that, to be treated respectfully.

>> Ed Rast: Continue.

>> Dave Zenker: In the spirit of moving forward, my proposal under the subject of exemptions would be that the task force consider establishing exemptions, for personal activity, attorney-client privilege, that we accept Mr. Brownstein's definition of whistle blower, that that be one of the exemptions, that there be an additional exemption be provided for what is called proprietary business. Proprietary city business, examples being corporate recruiting or retention. So the exemptions would be personal activities, attorney-client privilege, whistle blowers, those that fear retaliation and proprietary city business. Five exemptions.

>> Ed Rast: What about number 2, is that a part of it also, in other words, you've got public officials who seek to prevent disclosures, meeting grounds and et cetera, is that number 2?

>> Dave Zenker: You'll have to argue that one for me, sorry. Your recommendation number 2.

>> Bob Brownstein: I put the suggestion at a public officials who want to prevent disclosure based on these grounds, that they should get -- run this by the City Attorney essentially to help try and deal with the problem that Mr. Chadwick mentioned, that it wouldn't be a total honor system in the sense that you would at least have somebody else looking at it as a check. If the city attorney's office thinks that they can perform that in a reasonable way, then I think it's probably useful. I would support your motion, if that's not in there.

>> Ed Rast: Mr. Zenker, Dave?

>> Dave Zenker: I can tell you what I think but we should get task force.

>> Ed Rast: Mary Ann?

>> Mary Ann Ruiz: For the fear of retaliation or for all --

>> For the fear of retaliation.

>> Joan Rivas-Cosby: Joan Rivas-Cosby. I thought the whistle blowers and the fear of retaliation would be incorporated into compensation.

>> Bob Brownstein: I could be considerable with that.

>> Bobbie Fischler: At one point I was a whistle blower within the city. And if the provision that there had to be a memo to go to the City Attorney, had been in effect, I probably would not have said anything. It saved the city \$500,000 a year for five years. And I can only tell you my experience.

>> Did you meet with the councilperson or their staff or --

>> Bobbie Fischler: Actually I met with City Manager.

>> Ed Rast: Ed Davis.

>> Ed Davis: I don't want to complicate things, I haven't said anything all even so I feel bound. I was just going to mention that as far as the meeting with the City Attorney, and attorney-client privilege, I don't

believe the meeting itself is covered by the attorney-client privilege. Perhaps the subject of the meeting would be. But it would seem to me that it might be interesting to see how many meetings with the City Attorney there are by various councilpeople, without disclosing necessarily what was discussed. But I think the law is pretty clear that just meeting with your lawyer is not covered with the attorney-client privilege. Perhaps when they meet with Lisa or Rick, that can be on the calendar but the subject doesn't have to be.

>> Dave Zenker: Right, in the spirit of moving forward, I've said that twice already. I they you know, I want to reiterate something that Dan said. My goals is getting something to the City Council that is palatable. I don't want to lose the baby with the bath water ultimately. I want something workable for the pilot period and we can see how things go. I guess my recommendation maybe at this point would be that we go with those five exemptions, not with the memo to the City Attorney because I think it's going to complicate things and then if the task force is generally comfortable with that we can move on to applicability.

>> Ed Rast: Additional comments to the task force?

>> Dave Zenker: I was going to take that in one motion.

>> The Clerk: We have a motion.

>> Dave Zenker: The motion was to accept the entire recommendation.

>> I'll second it.

>> Dave Zenker: There's not a motion.

>> Ed Rast: He is putting out what he wants in his motion. Let's finish up and we have public comment also. Let's get a public comment. James Chadwick.

>> Came up before I had a chance to come. I just wanted to address this concept of proprietary city business. If that's the terminology that's used I have really no idea what that means. If there's a -- if there are specific considerations I think it would be appropriate to address those. So for instance, if there's a meeting with a prospective employee, the disclosure of which would compromise the employment, that would be a justification. But saying proprietary business, you could call virtually the anything the city does be proprietary business. I would have a concern with that. Just what's palatable to the City Council, one of the Reed reforms which was adopted and approved by the City Council was disclose the calendars of the mayor and councilmembers, period. No exemptions, no qualifications, just do it. I don't think the City Council is going to have a problem moving forward on something that it's already adopted as an approved reform.

>> Ed Rast: Karl then go to Dan McFadden.

>> Karl Hoffower: Karl Hoffower. If you could give another example of proprietary, just besides the hiring of someone, or if you're --

>> Dave Zenker: Actually that had more to do with dealings with corporations that were considering moving here, that we wanted to potentially keep confidential until the deal was done.

>> Isn't this recruitment and retention?

>> Dave Zenker: In the event the City of San Francisco wanted to talk to them too.

>> In the event that we wanted to speak to the 49ers, we would say proprietary business.

>> Dave Zenker: We are really proposing a pretty significant increase in not only content but the number of individuals involved. And so I actually think we're doing a pretty good job of shooting to the moon here but I want to be reasonable as well. And so I think you know, kind of like Dan said, you know, I think we could get something to them that's so tightly wound up that they're just ultimately going to blame us for not trusting them. And what I would prefer to create is a beast that is going to live on and be able to continue to develop. So, all right. Moving on to applicability. The subcommittee went around and around on applicability. And ultimately came to the conclusion that we felt the calendar disclosure requirements

should apply to the mayor and City Council, as well as the six City Council appointees, the chief of staff of the mayor, City Council and every department head. And I think that's between 43 and 46 people. It's assumed in here although it's not written and I appreciate you bringing that to our attention that all of these people be required to keep a calendar and all provisions of the ordinance would apply to all of the individuals equally, except for how they're published. Our thoughts were that the Web publishing that occurs every month would be of the mayor the council and six council appointees. Anyone else would be required to publish their calendars to anyone who asked as a public record.

>> Joan Rivas-Cosby: Joan Rivas-Cosby. Item B that would keep the same provision that they would release it in the past and nothing future, correct?

>> Dave Zenker: Correct.

>> Ed Rast: You want to continue?

>> Dave Zenker: That's basically it on calendars. I think what I'll do is go back and summarize everything we've conceptually agreed on.

>> Ed Rast: There is two areas I think you should do, economic development, absolutely important that we keep it confidential and the other is city staff recruiting. That's another area you have to be careful about. Proprietary business, that opens up a huge area. Rather than use that title, I'd rather say economic development and city staff recruiting as the area. And that to me just brings it down. We don't have something that you can run a lot of other things in. And it's very clear.

>> Dan Pulcrano: Dave, would it make sense if, in cases where they don't want to disclose the name of the individual, that they instead place the purpose? For example, 12:00, business recruitment and retention, or interview with perspective employee, or you know, whistle blower.

>> Dave Zenker: That's a good question. We never got into that area. If they do choose not to disclose something because it meets on the exemption criteria should there be posted in its place to indicate something got redacted or something was not disclosed, it is an exemptible -- is that a word? It is an exemptible meeting. So it's up for discussion.

>> Ed Rast: We're running out of time. Do you want to make a can motion?

>> Dave Zenker: I think so. The recommendation would be on disclosure of calendars, that frequency of disclosure on the Web would be every Monday by noon, for the previous seven days, content would need to include the names, the titles of the individual, the organization they represent and generally the issues being discussed. Any unscheduled or impromptu meetings, officials are encouraged to record unscheduled meetings with policies, in which the matter under consideration is discussed. We would allow five exemptions, for personal activities Attorney client privilege, whistle blowers and those who fear retaliation in addition to economic development and city staff recruiting. And finally, the applicability would stand as written, would apply to those 40 some-odd individuals, the mayor, City Council and six City Council appointees would web-publish and the rest of the individuals would make their calendars available upon request red trow expectively.

>> I'll second it.

>> Virginia Holtz: I'll second it, Virginia Holtz.

>> Ed Rast: Do we have further discussion? On the motion?

>> The Clerk: I just have a parliamentary procedure. We did have a motion on the floor. So either the first motion to approve as recommended, either needs to be withdrawn, or we need to vote on the substitute motion first. And then zeal with the --

>> I don't think we did.

>> The Clerk: Yes, it was seconded.

>> Ed Rast: It was? Okay. Because I thought we were talking about making a motion.

>> Dave Zenker: Can I offer that as a substitute motion?

>> Dan Pulcrano: I'll withdraw. I did have one friendly definition rather than, I think economic development is rather broad. I think would you agree to the change, business recruitment and retention?

>> Dave Zenker: I'm fine with that, that was our original definition.

>> Ed Rast: Let's see if we can get a comment from our economic development people on the change.

>> Just a request for clarification. As in San Francisco and Milpitas, the listed officials would be required to maintain calendars?

>> Dave Zenker: Yes, correct.

>> Paul Krutko, chief development officer. I liked the chair's recommendation. The reason I like the chair's recommendation is many times we get into policy matters, that we want to solicit opinion on and I'll give you an example. The north San José policy. Now, is that corporate recruitment and retention? Ultimately, that policy change would result in corporate expansion, potentially. So I wrote just suggest to you that not everything that we do, that might -- we might want to seek advice and council from a variety of sources who might want that to be confidential, so I just suggest your economic development --

>> Ed Rast: Let me make a comment to Paul's thing. We've got other sunshine requirements for dollar amounts an everything else, that should can cover that. If you have got economic development, some of this other stuff, we've got it covered unless -- I'm open for discussing.

>> Dan Pulcrano: I think just discussing north San José would be a rather broad interpretation of the exemption issue. Particularly this exemption is to proceed you from disclosing to competitive cities that you're trying to recruit a specific sports team or a specific corporation. You don't want Cupertino to know that you're trying to get apple to move its headquarters to San José. It could be about land use and zoning issues. We don't need to know what everything you talk about. As a member of the media who regularly reviews the calendars of public officials, I think it's very telling just the general pattern of activity. We mow if a public official is engaged in a perpetual pattern of concealing meets on a regular basis, or if they don't have anything on their calendar it looks like they're not working. So it helps evaluate the performance of that official and constituents will do the same. How many meetings you have and how you disclose it on your calendar will be very telling. I don't expect every single official to do it the same wait you about we'll know the number of meetings you have and who you're meeting with. That's up to you what you want to put on.

>> Let me give you another example then. In that context, maybe that won't be a good example. Dan will help me in this. We were in a series of negotiations with the adjacent municipals. In the case Palo Alto, we were negotiating with a number of municipalities at that time. So what I'm trying to maybe suggest to you is if you can look at a broader definition that might be helpful. But if you can't that's okay. I just see in my mind this might be one of the ones that I would like to sit maybe for a day or two and think through. If you narrow it into corporate retention, that is something I might, with some thought, come up with categories you may be interested in exempting.

>> This is your report to the public. The way you choose to present the schedule of your activities is the way the public is going to view you as a public official.

>> Ed Rast: Tom Manheim.

>> Tom Manheim: The city staff professional staff, the council will do their best to implement holding with good faith to the way it's written. I don't think it's fair to imply we should ignore the words you're using and report it in a different way.

>> So economic development and city staff recruiting in the event that staff comes up with something more specific or better definition, we'd certainly be interested in hearing that. And that's the motion as it stands at this point.

>> Ed Rast: Let's see --

>> The Clerk: I need to make a comment. I'm speaking for other council appointees who aren't here. First of all, when you see my calendar, you'll find it very boring. Barbara Atard spends considerable time with people who come to her office to file complaints. I think the committee contemplated that, regarding proprietary business because you do reflect are there other exemptions we should consider, such as workload issues or complaint confidentiality. If we modify it to say other economic development and business retention. That might get lost. Maybe you should consider making that a sixth exception.

>> Ed Rast: Dan.

>> We did exempt the City Auditor from this didn't we?

>> In this discussion I believe.

>> We exempted the City Auditor, and if we did --

>> We had exempted him in an earlier discussion but he's back.

>> The Clerk: You didn't even talk about my calendar but --

>> Ed Rast: Dan has got a good point.

>> Dan Pulcrano: I would be in favor of exempting the City Auditor and the police auditor.

>> I would include the police auditor --

>> Ed Rast: They're not included on that. Did that get addressed. Dan.

>> Dan McFadden: Dan McFadden. I would add the director of employee services. They have an open-door policy so people can come in and it's just a natural. While you're taking the two auditors off which I agree? I think I would -- Tom is getting real frantic here.

>> I want to clarify. I think he means the director of employee relations.

>> We have there funny little division here. You have the employee relations, dealing with unions, and employee director, it is basically your HR director.

>> Ed Rast: You strike both the employment relations director and the human resources director which is eventually going to be changed to personal development director?

>> Yes. This is the basic personnel operation.

>> Dave Zenker: I'm fine with that. I always had a discomfort with that, so we strike.

>> Ed Rast: And employee relations director?

>> Dave Zenker: And employee relations director.

>> Ed Rast: Is the second okay with that?

>> I thought the human relations director, I see --

>> Maybe I can clarify. The hot line for any kind of whistle blowers comes into employee directors.

>> Ed Rast: Dave. We're done?

>> We have a motion.

>> Ed Rast: We have a motion. Thank you. Any public comment, no. Hopefully, no. Any -- I'm sorry, wait a minute, we do have a public comment, I apologize on this one. I had a card on it, I apologize.

>> Thank you, Brian Schmidt for committee for green foothills. I had an environmental suggestion which is somewhat tangential to what has spoken of before. Environmental information and making that information publicly available. There is a problem in the way San José handles environmental information that you don't find in most other cities. And it happens in a way to make it impossible to make environmental information public. In most other cities if a developer comes to the city with a project that is known to have environmental impacts, the city pays the fee, hires a consultant and prepares a preliminary version of the document that will eventually become the draft environmental impact report. It doesn't work that way in San José. In San José, the developer hires the consultant on his or her own. And the developer owns the preliminary version of that environmental impact report. The developer, not the city,

not the people. So the very first versions are not available to the city, and then by extension, they're not available to the public. And you can contrast that to other places where these preliminary versions normally they're not given out to the public but other cities and jurisdictions, the cities have that option of giving that out. Santa Clara County, 12 years ago, switched from San José's version of doing things, to the version that's now done in most other places. And for that reason, it seemed, it gives Salt Lake the option of actually releasing that information. They've even set up a policy for doing that. My suggestion is to ask city staff to first review Santa Clara County's switch from developer owned to government owned preliminary draft environmental impact reports and secondly, make a recommendation whether the city should make the same switch. Thank you very much.

>> Ed Rast: Sheila, would that fall under the public records act more so than public information? You have an initial study EIR process, they release, then they do a negative declaration or else they do a preliminary EIR. I think that falls under the public reports act.

>> Sheila Tucker: Sheila Tucker, City Manager's offers. It is a process question. I know it doesn't fall under the categories, release of information that we're contemplating.

>> Ed Rast: Paul.

>> This is not completely my area. Paul Krutko, chief development officer. An administrative draft of the EIR is produced, which is then sent out to all potential stakeholders for comments, including the organization that the gentleman represents. When the comments are received the staff goes through them exhaustively one at a time, responding to them creating the record that ultimately goes to Planning Commission. And a negative declaration is one of the actions that can be taken, or it can say we accept this environmental report and you need to do these mitigations.

>> Ed Rast: similar to the baseball draft EIR.

>> However it is produced then it is fully in terms of sunshine, it is fully sunshined and anyone and everyone who wants to comment gets that opportunity.

>> Ed Rast: Go ahead.

>> Just to clarify that I'm talking about preliminary versions of those documents, either called preliminary draft EIRs or administrative draft EIRs, those are not normally released to the public. But in cities where they follow a different process from what San José does, the cities have that option because they own the documents. Here San José does not own the preliminary version until it gets turned over to the city and that's what we'd like to see changed.

>> Ed Rast: Ed Davis.

>> Ed Davis: I don't pretend to be familiar with this area at all but it strike me that this is public records act area that has been problematic in the past, not necessarily in this context but I can see it being problematic. That's the focus of what the speaker is talking about.

>> Ed Rast: We'll get back to staff and get a comment. Then get back --

>> It is a good point to think about.

>> Ed Rast: Sheila?

>> Sheila Tucker: Certainly a topic we could take up under public records. My recollection of draft as it relates to information being disclosed is more about memorandum working documents, on policies or programs, and whether those would be released upon a public records act request.

>> Ed Rast: Lisa.

>> Lisa Herrick: Lisa Herrick. The document is never a city document so it really isn't a public record issue. But in any case he's raised an interesting issue. The task force can take it up, it looks like it's flagged, so we'll get back to you about that, wherever it has taken us.

>> Ed Rast: We can notify him when it's coming back up again. We have a motion on the table?

>> We do?

>> I seconded it.

>> Ed Rast: We had a second on the motion. Karl, do you need a --

>> Karl Hoffower: No.

>> Ed Rast: Okay. All in favor? I read the motion?

>> Ed Rast: We're we're back to Dan. Dave Zenker's motion we was on the table. We took a public comment which was somewhat off the topic and now we're back to his motion. Anybody needs it read again?

>> No.

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

>> Ed Rast: Opposed, any abstentions? So it passes.

>> Mr. Chairperson, just very quickly I'd just like to thank the subcommittee. They came to the discussion of public information in the spirit of finding something, that we'll bring transparency, but also, you know, be workable, did a very good job. I just wanted to make that comment.

>> Ed Rast: We are not quite finished with that topic, unfortunately. I know we're running out of time. Virginia.

>> Virginia Holtz: I have a comment for the next topic, C.

>> Ed Rast: On G, right?

>> Virginia Holtz: I'm talking about Roman numeral 5 draft C, draft ordinance public information provisions.

>> Ed Rast: We haven't covered F, lobbyist on behalf of the city and we haven't covered G, public outreach. Do you think we can cover that quickly?

>> Dave Zenker: I stayed through my birthday and I'm five minutes late.

>> Ed Rast: we'll agendize that for the next time. Gentlemen Sheila.

>> Sheila Tucker: Sheila Tucker City Manager's office. We circulated the draft ordinance and got staff input. Maybe between now and when we agendize this, we could work with the subcommittee on any comments you might have on the draft ordinance. And integrate what we've agreed to on calendaring and we'll bring it back.

>> Virginia Holtz: My comment was just a phrase to add to one of the sections. It was not a big deal. So I can state it now or I can just send it to Sheila with, what's your pleasure?

>> Ed Rast: We'll agendize that next meeting. Status report to the City Council on proposed sunshine ordinance.

>> Yes, just a brief staff update on that. We've prepared a summary of those decisions that we've made today, those that are outstanding, the chair and vice chair are currently review those, and getting it in the next agenda.

>> Dean Monroe, Mayor Reed's office. Can we have milestones of when these matters will be coming to the council?

>> Ed Rast: That's what we're thinking about. We want time specific schedule. Okay, all right, so the next idea is the upcoming agenda and work plan.

>> Well, do we want to go ahead and come back and complete public information and go on to closed session? Or go back to public meetings? What's the desire of the tasks task force?

>> Virginia Holtz: That policy 630 is going to the the biggie.

>> Ed Rast: I don't think it's going to be that difficult. Because we had a meeting with Tom and Ken Podgorsek and Katy Allen. And what breaks out on this from a work plan is that the one which is public outreach for planning, which is private land use issues, Katy Allen in the Public Works department is

going to develop that same type of signage and other things for the capital projects which she does which is number 2. And the staff is going to come back with recommendations on number 3, issues of significant public interest so we have got better outreach on that. At least we're close. Tom, is that your interpretation?

>> I think so, yes. I hope so.

>> Ed Rast: If you take language out of 630 and modify the other, I think we're pretty close. So it's --

>> Virginia Holtz: Good news.

>> Ed Rast: Yes.

>> So we'll agendize public information and then move on to closed session or back to public meetings?

>> I would go public information, closed session then public meetings.

>> For the next meeting we'll agendize public information, closed session.

>> Ed Rast: Hopefully we will wrap these up.

>> That's awfully ambitious. But --

>> Ed Rast: I need to talk to you, you, me and Ken talking about a couple of issues. Anything else? We have a motion for adjournment?

>> Move to adjourn.

>> Second.

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

>> Ed Rast: We are adjourned, thank you very much.