The following transcript is provided for your convenience, but does not represent the official record of this meeting. The transcript is provided by the firm that provides closed captioning services to the City. Because this service is created in real-time as the meeting progresses, it may contain errors and gaps, but is nevertheless very helpful in determining the gist of what occurred during this meeting.

>> Ed Rast: Couple of administrative announcements. If you haven't validated your parking ticket, the validator is in the hallway. If you would turn off your cell phones and other noisy electronic items we would appreciate it especially because it interferes with the speaker system. Also, make sure that you, when you're going to speak that you pull the microphone close to your mouth so other people can hear you. We have a quorum, then. All right. We'll call the meeting to order. This is the Sunshine Reform Task Force for Thursday, April 5th, 2007, and the meeting is called to order. First agenda item is approval of the March 15th, 2007 minutes. Motion?
>> Move approval.
>> Ed Rast: Second?
>> Judy Nadler: Judy Nadler, I'm abstaining because I wasn't present.
>> Ed Rast: Judy -- Ken did. Sorry. If I remember correctly Dave Zenker will be absent tonight, at least I saw the notice. Do we have anybody else going to be absent? I'm talking about tonight's meeting. Just Dave Zenker.
>> Thought you would be leaving after eating.
>> Ed Rast: Do we have any changes to the minutes? Are there any changes? No, there's not? All in favor? Aye. Opposed? And we have one abstention. Comments from the chair is the next agenda item. The City Council on Tuesday night, in the evening session, went over agenda item 9.1A which discussed the economic impact report that economic development brought forth. We had comments from task force members Virginia Holtz, Brownstein, Brenda Otey and myself. The discussion from the City Council was very knowledgeable, it went on for a long period of time. They talked about a lot of the issues. I think there was a general understanding of the council and the public of the issues. They referred that back to us with an expectation that we would complete that by the end of this month, and then once it's completed it would go back to the council and they would take action on our recommendation within three weeks. They talked about the idea that not only would there be an economic impact model but also, that there would be a fiscal analysis, that's the amount of money that goes out and the amount of tax money that comes back in and they would also take a look at a cost-benefit analysis. The cost-benefit analysis would take a look at what the cost to the community are, because any time a particular event is put on, there are costs to the community, both in things like traffic, environmental damage, garbage and other costs that go out to the community. So I think also we had a discussion prior to that, and after the meeting, with economic development, and redevelopment agency and when we talk about the agenda items later on we can talk about that. We need to set up a committee to take a look at the impact model in that discussion.
>> Chair.
>> Ed Rast: Yes, Virginia.
>> Virginia Holtz: You mentioned council meeting Tuesday evening. I would ask that staff provide for us the recommendations that came out, it was a PowerPoint presentation to the council.
>> Ed Rast: That's correct. Maybe you can talk a little louder, repeat yourself Virginia.
>> Virginia Holtz: This isn't working or maybe it wasn't up high enough. I would ask the staff provide to the task force the PowerPoint presentation that was given last night when talking about that pilot project.
>> That's actually linked on the Website.
>> Virginia Holtz: Is it now?
>> Yes. We've actually started to do that when a PowerPoint presentation was provided by staff or consultants or whomever then we Ling that to the materials.
>> Virginia Holtz: Was it on there prior to the meeting?
>> No, it wasn't. We do it after the fact.
>> Ed Rast: And also, wasn't there going to be a -- the council had a number of recommendations that each council made that they were going to put a summary of those together and forward them to us. Each councilmember had a presentation they made. This was a question.
>> Does anybody else at the council meeting recall? I don't recall that was part of the action. I reviewed the synopsis

today and we have put it out and there wasn't specific direction given to do that.
>> Ed Rast: Okay, I'll have to go back and take a look. I thought there was a comment by one or more of the councilmembers that they would like their comments to be given to the task force so we could take a look at it when we consider it. One comment on that is, Tom Manheim.
>> Tom Manheim: Sorry. Tom Manheim. The transcript of the council meeting is posted on the Website. If you go to the page where the video is posted it's linked to that and you can also pull up the agenda and actually playback the entire conversation at the council meeting. It's linked to each agenda item.
>> Ed Rast: And if you have time I would recommend that you go back and play it back. It's a very interesting discussion. To give you some context, when we discuss it, that you'll have context of what the council's thinking. That's all my comments. One of these, we've got limited time tonight to cover a lot of topics. We've been over these topics before. We should be able to try, come to a vote, people will move on to the next agenda items. That's the end of my comments. I think -- Eva.
>> Eva Theresa. It's a pilot program that includes six different programs that will do a cost-benefit analysis and they also excluded, I didn't touch anything. It also -- it also excluded the exemptions that staff recommended.
>> Excluded. Okay. What my understanding, they said there would be six projects, there is a list longer than 6 so they hadn't excluded specific from the six.
>> That's right.
>> Ed Rast: Okay. Are you going to cover again a review of the meeting material?
>> Very quickly. In your packet under closed session we have the City Attorney's legal analysis on the labor negotiation recommendations. We've also included the legal analysis by a legal firm on behalf of AFSCME, local 101. And following the distribution of the agenda, we received a letter representing the local union number 3 and that's also included in your packet. Under public meetings, we included documents that addressed some of the issues and recommendations, particularly ones remitted to the council committee procedures which addresses the issues of stacking. There is also the council agenda and study session process changes, information memo, which lists the exemption to the ten-day staff report rule, and approved by rules committee. And also, included is the subcommittee's recommendation regarding items of significant community interest. And finally, at the very end, we've included three letters addressed to the task force, two relate to public records request.
>> Ed Rast: Does task force have any questions on the materials for the meeting? The next agenda item is discussion of closed session provisions. And Susan Goldberg will be leading that discussion. Susan.
>> Susan Goldberg: All right. I guess where we left off, I guess we violated the Meyers Milius Brown act. Staff viewed it one way and these folks viewed it another way. I don't know Lisa if you wanted to discuss --
>> Lisa Herrick: Lisa Herrick from city attorney's office. Norm sato is much more qualified.
>> I'm Norm sato. Can you hear me? No.
>> testing, testing.
>> My name is Norm sato. Mr. Chair, members of the task force, we were asked to look at the two Sunshine Reform Task Force recommendations which are at the top of our memo, you see ton screen. And we concluded in our memorandum that the early public involvement process such as a study session for the public to ask questions and to provide input does not violate the Meyers Milius brown act which was the, notice requirement for city labor contracts is not an independent violation of the labor act. In other words, it's not the kind of action which would be an unfair labor practice under the law. And I'd be happy to answer any questions that the task force members may have.
>> Ed Rast: Ken Podgorsek.
>> Ken Podgorsek: Ken Podgorsek. What I fount interesting, I'm sure this is not an incredibly uncommon thing. I found it very interesting that your assessment of this is very different than the labor union's assessment of it. It's not -- there isn't a lot of similarity. Can you explain why -- why the dissimilarity? Is there something that they're seeing, looking at it in a different direction?

>> We analyze the proposals as recommended by the commission, and I think from the -- I read both the opinions of the labor union attorneys. And I think they analyzed it from the perspective of actual negotiations. In other words, if there was public input during the negotiation process, that interfered with the reaching of an agreement, that that possibly could be an unfair labor practice under the law. But as to your recommendations, in and of themselves, they do not constitute unfair labor practices in my opinion. And I spent ten years prosecuting unfair labor practices with the state agency. So I'm familiar with this area.
>> Ed Rast: Bob Brownstein.
>> Excuse me, Mr. Brownstein, could you use your microphone please.
>> Bob Brownstein: Bob Brownstein. The problem is not the existence of the ten-day period but the kinds of things that might happen or might be perceived to happen within the ten-day period. For example, if in a public hearing during the ten-day period a group of members of a bargaining unit who are dissatisfied with the proposed contract as to get up and respond to the contract, and the City Council would respond positively, that would clearly be a violation of the contract. You would not be bargaining with the exclusive bargaining unit.
>> I don't disagree with that. The Meyers millius Brown Act is very clear. Until the City Council approves the agreement, that agreement is not in effect. And the agreement is with the City Council.
>> Bob Brownstein: I'm not disputing the ability of the City Council to be the final decision maker regarding if agreement. I'm discussing who they can negotiate with. They can't negotiate with parts of a bargaining unit that are run by parts of a bargaining unit. They can only negotiate with the entity of that group. De facto engage in negotiations with the City Council that would be an unfair labor practice.
>> That would be correct. I think we state that in our memo. That is one of the rare circumstances where that is what we call a per se violation of the labor laws is when an employer engages in direct negotiations and bypasses the union representative. So that is correct. The.
>> Ed Rast: Susan Goldberg.
>> Susan Goldberg: Couldn't that be solved by having the City Council understand clearly what the rules of engagement were given that there is going to be this period of time for the public to comment on it, they would need to be brief, it's okay to say this, it's not okay to say that, I don't think that that seems like that difficult of a task. I mean, these are all smart people.
>> Bob Brownstein: Well, I think that kind of provision of information would be very helpful to the City Council in handling those kinds of hearings. And I think it would be prudent for city attorney's office also to inform the City Council just that there is the likelihood of drawing an unfair labor practice charge if, in fact, this council was to choose to reject a negotiated proposal, and urge the parties to go back to the table.
>> Ed Rast: Judy Nadler.
>> Judy Nadler: Judy Nadler. I think it's important to realize that the responsibility is not only with the council or the city, city administration but also the employees. It's important that the council knows the rules of engagement. They're clear on that. I think it's important for the members of the bargaining units to make it clear with their members how the things work. I think there's responsibility on all -- by all parties.
>> Ed Rast: Virginia then Dan then Margie.
>> Virginia Holtz: It's my understanding that this would not be a council meeting, it would be a study session. And the council is prohibited to make decisions in a study session. That's not true --
>> Ed Rast: They're separate. One of the discussion items was, that there would be a study session, a number of months before negotiations started for the contracts. And that would be an opportunity for the public to give advice to the council on what they did or did not expect prior to the council giving or the City Manager giving instructions to the negotiator. But what we're talking about here is when the contract has been negotiated by both the city and the recognized union negotiator and then it comes ten days notice to the public and then people at that council meeting would then comment. We're talking about the issue that we wouldn't want to violate the state law, and I think part of

that is covered by instructions prior to the start of the meeting on what can and cannot be done by maybe the City Attorney.
>> Virginia Holtz: Thank you.
>> Ed Rast: I'm sorry, Dan and Margie.
>> Dan McFadden: Dan McFadden, City Manager's office. Two things, Meyers millius Brown, and others may want to comment, allows for exchange of information but no negotiation. The whole thing hinges on negotiation. Somebody can come to a meeting, can you have exchange of information. You can't have negotiation. And the other is, that public employees are allowed to represent themselves. Each one can come forward and represent their interest under the law. But if this practice is not controlled, I agree with Bob and with Susan, I think you can control it, but if it's not controlled, I think it will make a mess of your whole bargaining process.
>> Ed Rast: Margie.
>> Margie Matthews: Margie Matthews. It reminds me of the speech that's given when people want to speak on items off the agenda. You can speak, but we can't respond. Very frustrating. Not only to educate the councilmembers when they walk into the meeting but to say for everyone, this is an opportunity for people to speak, we can't negotiate, you can speak, we can listen, actually councilmembers can probably speak to but anything close to negotiating will not be allowed. It will end up being rather frustrating but people will be allowed to say their peace piece.
>> Ed Rast: Susan Goldberg.
>> Susan Goldberg: A general agreement and acknowledgment that there could be a little bit of frustration in this process because it would seem incredibly unlikely that the City Council would go back to the drawing board, all of the problems that would cause, however, if I read sort of the mood of the group last time, people thought it was still worth it for folks to be able to have their say, during that time, and what we had asked for was an opinion of the city attorney's office, and thank you for that. If people don't want to spend a lot more time on this maybe we could --
>> Ed Rast: Ken Podgorsek.
>> Ken Podgorsek: Ken Podgorsek. I'm going to do something really quick. I raised that issue. It was my issue. I don't like people going to a meeting and feeling like they don't have power. There is a value in venting sometimes, or reinforcing and you know, so I think if -- it would take some work, but I think if everybody's informed of what the process is, at the time at the time of the end of the negotiation of approval of the contract. What I do think, though, is that it's the process here that's really interesting, is that the study session that would occur at the beginning of the fiscal year, to discuss sort of contracts that are coming up in general during the year, would be an opportunity where people could bring forth things, and basically are informing the council, you know, we would like you to, you know, negotiate for our benefit in this direction, and the council could take that or not take that. That's not an unfair labor practice. That's smart. You know, for an elected body to actually listen to the people that elect them. So I think that this proposal, I would be very happy for this proposal to go forward, because I think the combination of the two will make a very effective, open process, without violating anything.
>> Ed Rast: Somebody want to call the question?
>> Susan Goldberg: Can we call the question?
>> Ken Podgorsek: Got to make a motion first.
>> Susan Goldberg: You want to get public testimony.
>> Ed Rast: Do we have anybody wants to make a public comment? Normally what you do is you make a motion first so they can comment upon the motion I believe. And we don't have a motion, so it's difficult for them to comment.
>> Susan Goldberg: I would move that the two recommendations that we discussed last time be put forward, as part of our proposal.
>> Ken Podgorsek: Second.
>> Ed Rast: Discussion among the task force or comment from the city staff?
>> Good evening, Alex Gurza, director of employee relations. I just wanted to mention, as it relates to the item of

establishing a minimum number of days that the council memo has to go out, it isn't changing anything other than establishing a minimum number of days. We always put a council memo prior to the council meeting. The question is, how many days before. The last contract that came before the council, the memo was put out ten days before. Anybody could show up. The concerns aren't any different than they were, it doesn't change anything by saying it should be ten days or it could be seven. There still is a public meeting in which anybody can come and speak.
>> Ed Rast: I think -- Dan McFadden.
>> Dan McFadden: Dan McFadden, City Manager's office. The opportunity to educate the public and get input is the arbitration hearings. The city could take a position that they would like to have held in public because each side puts their case on and you get a very thorough understanding of what the issues are, the economics and et cetera. Now, the other side would have to accept that request, that it be held in public. But I any the city could take a position that they want those processes to be held in public.
>> Ed Rast: Bob Brownstein.
>> Bob Brownstein: I'm not totally opposed to this approach. At least to try and see how it works. Actually what's made me most concerned, after having read the proposal that was adopted the last meeting, was reading the city attorney's memo. Because the City Attorney's memo sort of says no problems, go. And that's bad advice to the City Council dealing with this. I hope the advice the City Council gets if this is implemented is be careful, there are a lot of land mines. Make sure the public understands what it can realistically expect from these sessions, and can't expect. Don't draw an unfair labor charge and mess up negotiations. So with that kind of information generated both to the council and for the public, this has at least a fighting chance of being productive and we could go forward.
>> Ed Rast: Fine. Susan, did you want to amend your motion, in other words, we've talked about the idea of having the study session prior to the negotiations so the public can put it in, you talked about the ten days. Dan McFadden made the comment about potentially opening up the arbitration hearings to the public which would be an interim step.
>> Susan Goldberg: Well, I think that's a separate issue. I think we should vote on this and move on. I mean, I think it would be really swell if everybody wanted to open up arbitration to the public and I'll live and breathe.
>> Ed Rast: Do we have public comment, no public comment. All right. All in favor, opposed, abstentions. Bob abstains. Passes.
>> Susan Goldberg: Okay. Our next item. Was to discuss the process for certifying and disclosing closed sessions. And I am going to turn this over to our legal counsel, Ed Davis, who did some research on this.
>> Ed Rast: Ed Davis.
>> Ed Davis: Ed Davis. Actually didn't do any research on it. Sorry, Susan. But in one of the reasons that research would not be particularly fruitful is because the certification process, as we're contemplating, is really unique. It's not -- it hasn't been done anywhere before, that I'm aware.
>> Susan Goldberg: You were going to check out how much the judges --
>> Ed Davis: We'll get to that. And there are two aspects of it. As Susan points out, the issue of how you attach -- someone might go about challenging the certification. Let me talk first of all just about the certification process. And it's worth your careful attention, because it is not only unique in and of itself, but the decision, if that's where the task force is going, to require audiotaping, is something I think is going to go to the heart of whether a sunshine ordinance is going to work or not. And I say this as someone who's been experienced from the legal angle with the question of taping closed sessions, and fighting with various government municipalities for years over closed sessions. I always believed that the best way to ensure that a closed session covered just the topics where closed sessions were appropriate, would be to tape them. And cities and counties have always opposed that. Once you get over that hurdle, though, and recognize that as everyone should, that taping is the only way of ensuring the topics that should be discussed in closed sessions are discussed in closed sessions, who do you disclose those tapes, how do you get

access to those? One of the ways, that's commonly used in the very few jurisdictions that do you have audio taping, is requiring somebody who wants to find out what was said, and gain access to the closed session tapes, is to sue, to go to court, superior court, hire a lawyer, file an action and litigate the issue. There are serious problems with that. Hiring the lawyer being the first one. It's expensive. It is not clear, under the law, what the standards or guidelines are with respect to whether or if those tapes should be disclosed to the public. So unless you have an effective mechanism to provide a dispute resolution method for getting access to the tapes, having the audiotapes, although a valuable step may be practically meaningless. So the suggestion in terms of trying to figure out a process that would work, my thinking is this: Is although I've had a lot of differences with City Attorneys and county counsels over the years, I don't think you can automatically assume that they're operating in bad faith. In fact I think the contrary is appropriate. So I thought, all right, if the City Attorney really believes that the audiotapes should be kept confidential, then he or she should put their name ton dotted line and say that, and provide a reason for the certification, why it should remain secret, and again, the reason should be enough that people understand it without disclosing what the secret is. Because then it obviously wouldn't be much of a secret. And it's a procedure, as I say, that really has not been tried before. So we are on something of experimental grounds. It would work like this. At the end of a closed session, the city, the default position as I think we've all agreed, the audiotapes of what goes on at a closed session should be made public as soon as the need for secrecy no longer exists. I think that's something we've all agreed on. It's something Mayor Reed was adamant about. When do you determine the need no longer exists? The City Attorney with would make the initial certification. Sayings, here's the reason it needs to be kept secret, and in my opinion, it needs to be kept secret until a date or a particular event occurs, or the City Attorney could decide this is so sensitive, and it could involve labor negotiations, it could coinvolve any subject that's discussed in closed session. But the City Attorney could say this is so sensitive that I don't think this ever should see the light of day. And should remain sealed or without access to the public in perpetuity. So we have a record here. And then a member of the public can make the determination. And the value to this system as I see it is that if we were to try to legislate the circumstances under which it could or could not be made public, it would do two things, either handcuff what the city could do, or conversely, subject the things that the city should be made public, this should be flexible enough to protect everybody's interest. If it is the city attorney's view that this needs to be kept confidential forever, that's the decision, if the decision is an appropriate one. So you don't have legislation in there that dictates what should be a flexible decision, depending on a variety of circumstances that they be unique to that particular closed session. So that's the way I see it, the beauty of the certification processing, is it gives the city flexibility. So the big issue here is, all right, the public now sees that this is going to be closed for whatever period of time did City Attorney certifies it as being closed. The member of the public, I disagree with this, I think it should be made available. Then you need a mechanism to challenge the certification. The proposal in -- the certification process I think should be relatively simple, relatively straightforward and I think is a very valuable process. The method of challenging that certification is a little more difficult. And there are varieties of problems. And the main problem is one of cost. Is if you, as has been discussed here, if you ask three retired judges, members of for example, we talked about a couple of meetings ago, jams, which is a private mediation body made up of mainly retired judges but also lawyers, as well, if they were to charge their usual rates, the whole process would be very, very expensive. What I am trying to do, and I do not have a definitive report for you tonight, but what I'm trying to do is see if we can -- if it would be either jams or some other body that could produce a neutral, somebody who doesn't have an interest in either side, but yet is experienced enough, in decision making, and sensitive to the City's needs, as well as sensitive to the public's needs, to be able to resolve the issue. It may be that we would want a three-person body. It may be that we would want just one person. It may be that in certain circumstances, you might want three. In other circumstances, you might want one person. But I submit that with respect to the authority that we choose here, that you choose to operate as a neutral, and resolve disputes with respect to the certification, and whether records, the tapes should be released, I think there are going to be a number of instances under the sunshine ordinance

where there are going to be disputes. And one of the big problems with the public records act and the Brown Act is, if you have a problem with the Brown Act or the public records act, again, you have to hire a lawyer, file a lawsuit and litigate the darn thing. Those are pretty expensive. I think we'll find as we go through procedure here and look at other things, for example, with the public records topics that we have coming up, that it will be valuable to have a dispute dispute recognition procedure available. I don't have a hard-and-fast recommendation to make to you tonight about exactly how the body should be constituted that makes the decision with respect to in this case certification. I think that's something, and I will continue working on that issue, and doing the research that I think is appropriate, but I think we all should think about a mechanism that will make resolution of disputes under the sunshine ordinance fair, economical, and quick for everyone concerned. So I would suggest that as far as the certification process goes, you know, look carefully as to whether you want the certification process with respect to releasing the tapes of closed sessions. That's something I think you can decide tonight, frankly. You have all the information you need to make that particular decision. And it's a relatively straightforward I believe kind of process. And then simply say that we need to have a mechanism established that we can work on, and I think we're going to be working on that mechanism 'til the very end of the process when we present our proposals to the City Council. But we can work on those details, but recognizing that we really do need an efficient, fair, economical way to resolve the dispute about whether a particular tape should be released after the certification process. So very simple, when the need -- unless certified, the tape will become public. If it is certified, the City Attorney has to state the reason why it should not be made public, and give a date on when, if ever, it should be made public. I think that -- Susan, does that sum it up okay?
>> Susan Goldberg: That is a very good summary Ed. I very much agree with your recommendation, that in the enforcement part, we split off this discussion. That will buy us some time, perhaps you can convince these people to donate some help or advice.
>> Ed Davis: It's interesting because I and my colleagues at the bar are hit up all the time by judges to do pro bono work and donate our time. Which most of us gladly do. It is a pleasure to hit up some of the judges now. [laughter]
>> Ed Rast: Dan McFadden and Bob Brownstein.
>> Dan McFadden: Dan Muni, City Manager's office. I agree that you're breaking new ground and probably don't agree on much after that point. And I want to say, we got into this last time, I've made a couple of times the point that I don't think this is workable and I'll go through the specifics. I'll say the same things here if I was say if I was asked council or members in front of rules. And I'm not an attorney. The last time we got into it, I'm a Ph.D. in public management, taught and consulted for years and years. I have given some thought to this. I see clear benefit to the recommendation where we started that we would record the closed sessions an you would have an outside third party check in listen to a tape and see whether we were staying within the rules of the Brown Act, playing according to Hoyle. That made sense to me. This business of certification by the City Attorney, I think there's a number of problems with it. One is, I think it changes the role of the City Attorney. It isn't consistent with our charter, which is to advise the council. That's the role of the attorney. You put the attorney in the role of they're in conflict with the penal they are to advise. Because there will be pressures from outside, unions, pressures from council on the political campaigns, there is a lot of potential for mischief on this. And the attorney serves at the pleasure of the council and by a one-vote majority. You create instability in that position and you can't afford to create any more instability in the City Manager and City Attorney. They are key positions, very difficult to replace, lot of down time. I don't like what it does from a management perspective, from an inside perspective. I'm not sure you'll get the volunteers. I doubt it seriously. I'm familiar with arbitration and panels. I don't know, Ed has a lot of contacts, but I question whether you're going to be able to do this on an ongoing basis and be able to get volunteers, primarily because it's open-ended. If you go to court you have to be relevant with your request. The court has to say yeah, it's fair what you're asking and there's a need to know. What you've said up here there's no test of relevancy. There's no governor on this thing. It's wide-open. I don't think it's workable. I thinkist grossly expensive. So that bothers me. I guess the other point I might make is that I mentioned before the Simidian bill. Ed is familiar with it. I think some other people in the room are

here. But it specifically says nothing should be released from closed session unless by a majority vote of the electeds, the people in the closed session. I don't know if there's any provision for doing what's proposed here and I think that ought to be looked at. I think this thing has been presented here without enough thought on the impact, long-term impacts of it, and I don't think it's a matter simply of saying we go forward with the certification form, and we see if we can find people who want to volunteer their time on the other end. I don't see that as a very workable solution here. So with that I conclude.

>> Ed Rast: Ken Podgorsek. Bob Brownstein.

>> Bob Brownstein: I think there's only really four ways to try and deal with this issue. One is to allow the City Council to be the own judge of its behavior. One is to make everything open, as soon as literally the cases are over. One is to have a third party review everything, and be the enforcer, and the fourth is the certification idea. I think the first two clearly fail the reasonableness test, that is, the council is a judge of its own behavior or that everything is automatically made public the minute the case is over. So we're really talking about having a third party review everything, and or having the certification process. Both of them I think have the potentiality of having the, City Council talking about things it should be talking about in closed session, and making a determination whether it's time for materials to be released, sometime after the case has been resolved, whatever was the subject of the closed session in the first place. So it's really a question of efficiency, which of the two is a more efficient or effective way to accomplish the objectives. Now, I lean towards the certification proposal, although I could be convinced that the third party reviewing everything is a better way. Where cost is concerned, I just assumed that having somebody do less work is less expensive than having somebody do more work. So if we have a third party who only reviews cases that are appealed as opposed to a third party that reviews everything, it is likely to take fewer person hours and is probably going to end up costing the city less money. And that's one of the objectives. And I am not as convinced that the tasks that are -- we're envisioning the City Attorney doing under the certification process are that much removed from the kind of things the City Attorney does now, or that much removed from the positions that a person of that stature could do. In fact, the City Council has to say, you can't talk about that in closed session, they may not be happy about it, the City Attorney has to hold to his or her position. As well as defend the decisions they've made against the public and organizations amongst the public that disagree. So it's a major-league job and it doesn't strike me that what we're asking here goes beyond what we would expect of somebody who can handle the rest of that job. But I would acknowledge, it's not -- I don't see it all one way or the other. And somebody could make the case that the third party reviewing everything makes more sense. I would just -- at the front end think that's going to be an extremely costly way to go.

>> Ed Rast: Ken Podgorsek.

>> Ken Podgorsek: I think it's highly unlikely that this task force is going to send forward a recommendation to the council that we're not going to record closed sessions. We may not have all the details down but we pretty much have a meeting of the minds on most issues if not all. We're going to be recording closed sessions. I think it would be irresponsible for us to send that forward, and then you know, basically send it forward with a method that fails. And the method that fails is, there's no -- if you're going to record closed sessions but then there's no way to ever -- you know, they're never going to see the light of day, that's silly and an expensive process that the city doesn't have to get into. So I think that it behooves us, it's important that we send forward some sort of process to certify how the city deals with these recordings. I thought an all of lot about where we're at on this now. I don't think we're at the end. I don't think we have all the answers yet. I think it strongly should go to enforcement. It is part of enforcement and will give us time to work out the details and vet it out. I am concerned about the cost to the city. I've said from day 1 it's not my goal here to become -- for it to become an expense or expensive process. And I think there are ways that, you know, with a lot of good thought I think we can work that out. Lastly, there's been some -- you know, the City Attorney in part of the current process, we had the City Attorney part of that process and Mr. McFadden, I think you're correct, under the current charter it does sort of put the City Attorney in a bad position, I have to concur a bit with Bob here in

the sense that you know the City Attorney's put in a lot of bad positions that you know, but he has to be consistent to the charter. So I'm not necessarily against changing the charter. So the City Attorney is also responsible to the citizens. And not only the City Council. So that he has a dual responsibility. He, she has a dual responsibility. If the process we're putting in place is going to put the City Attorney in conflict then we maybe ought to send forward a recommendation that you know, possibly the City Attorney like the City Manager maybe all charter appointees should maybe like the City Manager be recallable by the voters. And that will take them out of the conflict.
>> Ed Rast: Let me make a quick comment concerning city attorney's. We are of the five largest cities in California, we're the only one that does not have an elected City Attorney. So can you either go way to that direction which personally I'm not in favor of or we can take a look at what Ken has talked about which is having -- take a look at a charter change that will give some responsibility to the City Attorney to the public. And I think, if I remember correctly it was Karl, then Susan, then Judy -- I'm sorry --
>> Judy first.
>> Ed Rast: I think Karl was next. Then Dan then Judy.
>> Karl Hoffower: Karl Hoffower. So the last time we had talked about this I had said that I had first come out very strongly that we should be having this sort of openness. Then pop looking at it closer I became concerned about what Dan was bringing up, that this could be used politically and this would create this huge burden to the city. And when I -- when you brought up that situation of that there's a way to let somebody look at this if there's a challenge, without having to go through this process of having them all certified, I'm more amenable to that than what was just put on the table, on letting anyone challenge this and take a look at it. And I think I've asked you this before Susan but can you refresh my memory about when the Mercury News broke the story with the situation of the closed session? I know the City Attorney has a different opinion but that there was a violation of closed session rules. How did that come about?
>> Susan Goldberg: Well, what the story looked at was, the City Council went into closed session to discuss a land negotiation, and it's supposed to in that case be limited to, you know, the price and that sort of thing. But there turned out to be in closed session as we later learned a wide ranging discussion about how to, you know, generate political support for this project. It was for a baseball stadium. Were it to come to pass and that kind of thing. And the reason that we ended up getting the -- we ended up getting the minutes from the closed session. But that was because there was a mayoral race on and one of the people who was running gave it to us. So -- but I don't think that that happens every day of the week. But I think what that really showed, and this is really to my point and to Ed's point that the only way to really kind of get a handle in what goes on in these closed sessions is for there to be some hammer that you're really only supposed to talk about whatteer you're supposed to talk about. To be fair, the City Attorney completely disagrees with everything I just said and said that the discussions were utterly appropriate. But I would say you know, read the minutes and decide for yourself.
>> Ed Rast: Dan McFadden.
>> Dan McFadden: Two points here. I didn't understand it the way you were explaining. I thought there would be a sampling of a closed session and would you have quality control that way. I never put forward the idea of we would hire someone to listen to every tape. I don't know who would do that anyways. Secondly, it is a misdemeanor to violate the Brown Act. That would be taken seriously if you had someone checking in. I think that's getting into, about the certification that you're talking about, yes, the City Attorney gives legal opinions. That's his or her job. But you're talking about an opinion about something should be released because it may or may not be harmful to the city. It's -- and it may deal with, say, labor negotiations where you have these units running through and fire wants to know what police did and police wants to know what fire, you have people posturing making statements that they want released out of closed sessions and it does happen. There's a lot of mischief in there and people in the campaign season get pretty intense. You're using this as something different and I think the council may not challenge the City Attorney on the legal issue but they very well will challenge him on a judgmental call about whether something should be released

or not. It is not a legal issue.
>> Two things, one on what Mr. McFadden just said. There is already enough politics I think surrounding legal opinions that come from the -- any city attorney's office, because peek seek actually not so much the true, quote unquote, legal opinion, they seek the position that supports their position, not always but very often, I could say that. It is a very difficult job for anyone in the city attorney's office to just be giving advice on certain issues. But my caution about our discussion is we are getting it appears deeper and deeper into the city charter and a lot of other things, which may be very interesting, but I think we're getting farther and farther away from where we need to be, and when a charter or if a charter review group comes up, then let them spend nights and he weekends on this. Let's just get through what we need to get through.
>> Ed Rast: Susan.
>> Susan Goldberg: That's what I was going to say. I think what we're trying to do here is decide something more narrow than the charter role of the City Attorney or whether this should be a position you know that could be recalled or anything like that. I think what we've got on the table is a question of whether the City Attorney should be the person that makes the decision about whether an audio recording of a closed session needs to remain closed or can it be released, and if it needs to remain closed, what period of time? I really urge that we delay the discussion of exactly how will this be enforced until we get to enforcement, because I think it's very much tied in with the other parts of the things that we're going to recommend, such as should there be some sort of a permanent sunshine task force that can hear challenges and I don't think we should get bogged down with the idea, of boy, is that would be expensive, when we don't know what we're going to recommend now. Right now we should limit this to the question of is the City Attorney the right person to make this decision.
>> Ed Rast: Margie.
>> Margie Matthews: I agree with what you're saying Susan. If you're going to record something it's probably good-bye going to come out at some point in some way. It occurs to me that perhaps supermajority of the council is something we want to talk about when we get to that point, rather than a lot of expensive third parties who aren't involved and not accountable. Maybe a lot of that enforcement issue would come down to that, a supermajority of the council. It takes extra effort and extra commitment to overturn supermajority of the council. That is a thought of a way we might go. Then they're all accountable to that.
>> One point that Dan raised that reminded me, I should have raised in my statement at the beginning. One of the things that we need to do with the process involving enforcement, and taking a look at the certification, is we do need to develop some kind of standards. So whoever, whether it's a supermajority of the council or somebody from JAMS or whomever is doing the work, has a standard to work by. You know, legal things like who has the burden of proof? Do they apply a Brown Act, or how do we do this? Number 2, when looking at those particular issues, if a member of the public does want to challenge, I think there probably should be some kind of maybe a filing fee, to prevent the -- you know, use this term may not be appropriate, but the gadflies who will challenge everything, from just invoking the process at rote. And maybe if you're successful with your challenge you'll get your money back or something along those lines. We need to do standards and those kinds of things, even if we decide a mechanism of who's going to do the review. This isn't the first time that Dan has mentioned he isn't a lawyer. But I think he would be a good one if he chose to be a lawyer. Because I think he does something that a lot of lawyers do. And that is, build a straw man, and have everybody looking in the wrong direction. And I think his straw man deals with the City Attorney and the city attorney's role. Because remember, what the sunshine ordinance, which is the law, says, is that when the need for secrecy expires, it must remain public. And what the City Attorney would be doing is complying, and giving advice on that particular law. As he's saying, you know, here is my opinion as to the application of the law, which is the sunshine ordinance, to this particular set of facts. So the City Attorney is doing exactly what he should be doing, or she, in terms of expressing an opinion, saying, in my opinion Under the law, this should not be disclosed. That's exactly the city attorney's role. Giving a good-faith legal opinion, the decision is we don't want to do this because we

don't want to put the City Attorney in a hot spot for issuing legal opinions, then, and I don't think this would apply to Rick or most of the other city attorney's that I work with, but I don't think they're going to shy away from making that opinion, because they're worried about the political ramifications. They're lawyers. They're supposed to be working in good faith, exercising their legal judgment and that's all that this does.
>> Ed Rast: Bob and Dan and then we'll consider a motion.
>> Bob Brownstein: Bob Brownstein, I want to explore this idea of a third party looking at a sample of the cases. As I understand it, there are two objectives we're trying to achieve by taping the closed sessions. One, to assure that the closed session are legitimate, not talking about things they shouldn't in closed session, I can see how the third party looking at a sample handles the first case. I know, I think that would be a deterrent to stop people talking in closed session about things they shouldn't be talking about. But I don't see how you get to the second question, which, is it time for something to released because it's long enough now. I don't see how you get to that point without somebody making a decision about every single closed session segment. It should be somebody other than the City Attorney but I don't think can you argue that somebody doesn't have to make a judgment about all of the things that are subject of closed session in terms of the question of is it time for it to be finally released.
>> Ed Rast: Dan McFadden.
>> Dan McFadden: I agree. I think that the obvious solution is what Margie just mentioned, the supermajority of the council. Because I think, and again I'm not a lawyer, as Ed has pointed out and as I've pointed out. But I think that the understanding is that stuff cannot be released from closed session unless it is a supermajority vote of the electeds. I don't know that you can simply set up this process where you can have a certification. You're asserting that Ed but I don't know if there's any research on that. Secondly, what happens if the City Attorney runs into opposition from a majority of his councilmembers? What says either I'm going to certify it or I'm not, I'm going to release it or not, and there's a majority of the council that says we don't agree with you on that?
>> Ed Rast: Go ahead.
>> Ed Davis: With respect to the first question, I believe the law is quite clear that both the Brown Act and the public records act establish floors. And you can go above, floor or ceiling, whichever way you look at it. But they establish minimums. And you can establish your own stricter standards if you so choose. So you can -- because the Brown Act permits certain subjects to be discussed in closed session, it does not mandate certain topics have to be discussed in closed session. It's really up to the particular governmental entity. So I am very confident that creating a standard that said you can release this type of information under these circumstances is well within the ability of the council to do. The second issue that Dan raised, interesting question, is if the City Council instructs the City Attorney how to certify something, that is an interesting question. It would be like the City Council would be acting ultraVires, a Latin term, they would be acting outside the law. The standards, the City Attorney exercises his or her good faith legal opinion, certifies it one way or the other. City Attorney, I don't care what you say, I want this closed, I think that would be illegal under the sunshine ordinance and thus subject to some kind of attack, judicial attack on its own. So I think that would be an interesting situation. I don't see it happening very often, but on the other hand, I think the law would provide for it.
>> Dan McFadden: I think the Simidian bill is the most recent on closed session and it specifically says it's got to be a majority of the electeds. It calls that out.
>> Ed Davis: I don't think the purpose of the Simidian act was to handcuff governments and make it more difficult to open up what was discussed in closed sessions. So I'll be glad to take a look at that again. I know what it says, Dan. No, thank you.
>> Ed Rast: Lisa and then --
>> Lisa Herrick: Lisa Herrick. Staff understood that the task force was interested in finding out what, if any, reaction the rest of the city administration had. I think that's correct. So I just wanted to pass along some comments, that we've received since the March 19th status report was released, and I'm passing you along this information. And I'll

probably interject as the topics come up accordingly. But since we're talking about closed session, it's probably not surprising that senior staff is concerned about the recording of closed session, not just -- I think we discussed it from the council's perspective, staff also has a real concern about the ability to be very candid about certain concerns or problems that they bring to council and how that overly changed the whole nature of closed session. So I wanted to pass that along, so that's not a big surprise when your recommendations go to the council and you see some staff opposition to that. To the extent, and I don't want to speak for staff, but for the senior staff, certainly, but I think to the extent that recording of closed session were to happen, the automatic disclosure of that, which you've been discussing, would certainly be of grave concern, as well. So the certification process, versus sampling is something you might want to consider further discussion on because it's definitely going to be raised at senior staff -- basic administration will certainly have opinions of all this and present them to the council at the time your recommendations go to council as well. Wanted to make that clear.
>> Ed Rast: Let me ask you a clarification question. If the Brown Act says close sessions, how do you address the staff concern about their candid questions, you never expect them to come out.
>> Lisa Herrick: I don't read anywhere in the Brown Act that there's discussion. I think what Ed was talking about was the sunshine ordinance that you're proposing. The Brown Act doesn't have that sort of provision. And ideas is that if something is -- if there is a reason to go into closed session at some point that reason may not dissolve. There isn't a procedure for that.
>> Ed Rast: I'm sorry, Mary Ann then Margie.
>> Mary Ann Ruiz: The City Attorney is there anyway, and overall I see that most of us are in agreement for the City Attorney to certify the closed session. So I feel pretty comfortable with us moving forward to make that recommendation. And there maybe some legal issues, Dan brought up some interesting questions and those can be brought forward to us at the next meeting to consider. I feel pretty comfortable for us make the motion to certify the closed session audios, if there's some sensitive nature or some exemptions, a little bit more guidelines where they wouldn't be released but I feet comfortable moving forward with this.
>> Ed Rast: Margie.
>> Margie Matthews: Well, just what Lisa said resonates with me. Because I think with many of these actions that we're recommending, it could very well have the opposite effect of what we're looking for, which is to stifle the honest flow of information. And there will be just less information to the council, in this case. Because I do believe that senior staff may not bring sensitive issues -- with no longer feel comfortable bringing sensitive issues, I'm thinking of personnel mainly where people's reputations are at stake. So be it if that's what happens. So then no one gets the information, the elected representatives do not get it and of course the public wouldn't get it either. Just a caution.
>> Ed Rast: Susan.
>> Susan Goldberg: I mean, I think that you know, sunshine could, in fact, make some conversations more planned, more less spontaneous. But you know, I really also believe that when there's important information to be told, people do do their jobs. And they, perhaps, might use different words if they have a sense that one day, this could get forced into public view, but that you know, people are honorable and do the best they can and will in fact make sure important points need to be known. I guess I were really surprised that city staff had a problem with this. But I guess I'm not. You know, what we're trying to do here is be a leader in making public information available to the public. And so I don't think that we should think it is a bad thing that this is innovative or it hasn't been tried or somehow that that is a negative. I really think it is a positive. And I would really hope that other municipalities would see this and follow our example. I don't know if -- were you making a motion, Mary Ann?
>> Mary Ann Ruiz: Yes, I was.
>> Margie Matthews: I guess we have a motion.
>> Ed Rast: I didn't hear it as a motion. And there was no second.
>> Ken Podgorsek: Isn't there a second?

>> Ed Rast: No. My next comment was for somebody to make a motion.
>> Margie Matthews: Mr. Chair, I thought we agreed that we should defer the audio --
>> Ken Podgorsek: Can I make an alternate motion? I move that we refer the -- we hear for further vetting and process the process for certifying and disclosing closed sessions and we refer it to the enforcement committee.
>> Margie Matthews: I would second that.
>> Ed Rast: Discussion, Judy.
>> Judy Nadler: Well, I just -- having been in many closed session, as Margie has been in and being all for sunshine, I'm trying to do the balancing act. And I guess the part that is most concerning to me, actually, comes not in choosing your words carefully or not swearing or whatever your reaction might be to whatever's happening. My concern is that when the city has a position, a legality position on trip-and-fall or whatever kinds of things that everyone sues cities for, because they think cities are deep pockets, and all it takes is an honest response to a councilperson's question about what is our policy and how do we approach this, and the City Attorney giving an honest answer and basically all the City's cards are on the table. So those are the kinds of things that I think we just need to be waiver. There are some things that you -- be aware of. There are some things that you want to keep close to the vest.
>> Ed Rast: See what I understand what you're saying. When we get to the discussion on what the conditions for a policy release are, that should be one of them --
>> Judy Nadler: I think we need to have a list, even if we don't use a list in whatever the final product is, but we try look, have people who are really knowledgeable about the consequences from a land use point of view or otherwise.
>> Ed Rast: I don't know where you want to put it but it needs to be discussed.
>> Margie Matthews: Just to reiterate, there are things here that would never come to light. Perhaps it would be because oh, that means everybody is going to you know, understand what the City's strategy is on a particular topic. But I would think that many, many things that do not carry that sort of burden would eventually come to light.
>> I'm trying to think of how an elected body, a council would hear this. And how a senior staff would hear this. And I've been listening really carefully and the wait sounds is, it's all out there. And so maybe I'm just saying, be careful how you phrase this, because opening the door a crack may -- may actually lead people to believe that it's more than that, it's all or nothing. And I think none of us believe that it's all or nothing. But it's all in the perception of the person that hears it and it's all in the perception of the City Council and the senior staff. And I just think we actually have to be aware and mindful of how we present this and that we need to be actually pretty specific on some things.
>> Ed Rast: Let me make a comment as the chair. We have a motion on the table that says we defer this. We're then -- I'm sorry, that we refer it, refer it to enforcement, if we continue to discuss this we're going to eat up a lot of time on in we defer it then we can discuss it later on.
>> Can you clarify the role of enforcement, is the certification process?
>> Ed Rast: Ken Podgorsek.
>> Ken Podgorsek: I think I can clarify it. We're not -- let me see if I can clarify this. We're not going to be voting for -- we don't have the process. I think what we have is the intent and the framework of the process. I don't think it's going to enforcement to have a dramatic change, but how to actually create a process that we can use and the city can use that's effective. I want to use this as an example. We could continue going around in circles on this discussion tonight. And not get anything else done. I think we've gathered enough information, I think the enforcement committee's going to have to get a bunch more from legal staff and from city staff to basically vet it out. But this has got a lot of similarities to the NGB discussion that we had. And when we finally took that discussion back to committee, took everybody's comments and looked at it, what we came up with was a position. Everybody said that's it. The City Attorney being the certifying body, we don't really know thousand appeal to that process should work. We don't know the legal ramifications, are there, you know, are we violating a greater law that would override there? I also want to make one other comment. I've been aware, I'd like to play risk manager an awful lot. And I've been aware that a lot of the things we're doing here have risk. But I tend to look at everything as both the risk and the

greater good. And I think if we continue using that concept, when does the greater good outweigh did risk, and don't put things forward whether the risk outweighs the greater good, but inherently, this may be the worst idea that ever came across but rereally don't know that. And I don't think that we can really draw the conclusion that it's a bad idea today. We have to try it.
>> Ed Rast: Mary Ann and then Bob.
>> Mary Ann Ruiz: For me to clarify, I was making a motion that the City Attorney does certify the closed session tapes. And I do agree with you that the a procedure does need to be developed. Was that what you were recommending? The motion was a City Attorney does certify. And if you feel that enforcement has to vet out that procedure and find out a little bit more of the legal then I'm comfortable on that.
>> Ken Podgorsek: I have a question on that. I might take that as a friendly amendment. My question is, in the process of vetting this out, what if the enforcement committee comes up with a better concept than using the City Attorney? Because we've had some challenges tonight of whether or not the City Attorney is the right person. What if, all of a sudden, the light comes on and we find a better way to do that? Are we restricting, the enforcement committee would come back with a different model but I'm saying are we restricting them to that. That's the only question I have as to the intent of the motion.
>> I think we're the open sunshine group and we're open.
>> Ed Rast: Bob and Virginia.
>> Ken Podgorsek: I'll accept that as a friendly amendment if the second agrees.
>> Bob Brownstein: I just want to make sure --
>> Ed Rast: Did we get the second to agree?
>> I'll withdraw my second. Somebody else can second it.
>> Ed Rast: Do we have a second?
>> Susan Goldberg: I'll second.
>> Ed Rast: It's --
>> Susan Goldberg: We're going to vote on something here and part of it will go to the enforcement committee, good.
>> Ed Rast: The procedure, standards, whatever, going to go to enforcement. Bob, thank you.
>> Bob Brownstein: Just want to make sure what isn't being referred and what we already have done. We are already in agreement that we are going to -- we're proposing recording the closed sessions. And that it is done for two purposes. To ensure that the discussions are legitimate, that they should not be talking about things that shouldn't be discussed in closed session, and secondly, in order to make things public at a time when there is no longer a rationale for keeping them secret. Those are the two reasons that we are taping the closed sessions, and that what is being referred to the enforcement committee is the best way to implement that, am I correct?
>> Ed Rast: And the standards they would be releasing.
>> Ken Podgorsek: That would be the way I understand it.
>> Ed Rast: Virginia.
>> Virginia Holtz: I want to make sure we all know what the motion is.
>> Ken Podgorsek: It's a complicated motion.
>> Virginia Holtz: Can you restate it, please?
>> Ken Podgorsek: Okay. That it is our intent that closed sessions are recorded. That a method of process of certification of how long and keeping the recordings closed is referred to the enforcement committee to work on work that's already been done and to come back to the overall task force with a workable proposal, that it is the intent of the task force that the City Attorney will -- is going to be that certifying element, but that the enforcement committee can come back with a separate recommendation, if other evidence show -- comes forward. Is at a fair?
>> Ed Rast:Fully questions on the motion? Second, are you fine with it? Ed Davis.

>> Ed Davis: Again, I hate to try and clarify what everybody is trying to clarify for the last half-hour. But on February 20th, we had an attachment to something or other, it's attachment number 3. And under number 7, it had a language that talked about the City Attorney certifying and the details about what the City Attorney would do to certify. And that section A-7 of this particular attachment, and what I'd suggest is that the motion be to adopt that particular language. It does not discuss the method by which that certification can be enforced or attacked. That I understand would be deferred or referred to the committee. And the committee then can say if there's a better way to do it than having the City Attorney certify that they're free to make that recommendation, too. But we already have specific language about certification.
>> Ken Podgorsek: Instead of using the word adopt can I use the word refer?
>> I can't make a motion. So --
>> Ken Podgorsek: I don't have that language in front of me. Can I see it?
>> Sure.
>> Tom Manheim: Tom Manheim. In the spirit of sunshine, can we make sure that gets out to everyone at the table, so we know what we're voting on?
>> Ken Podgorsek: We don't do sunshine here.
>> Ed Rast: Sarcastic comments.
>> You guys repaired it.
>> Ed Rast: Let me ask a question.
>> We can go get copies made.
>> Ed Rast: Is that available? No, it's not. Then we probably should get a copy made. Virginia, go ahead.
>> Virginia Holtz: while we're waiting, I would be in favor of severing the two and talking about the attorney and certification in one motion. And as Ed suggested, the other is just what we're doing is, we're just making a recommendation that we go back and revisit the implementation of how it would happen. And I don't believe we need to have that in the motion.
>> Ken Podgorsek: I'm uncomfortable with the word adopt. I'm comfortable of the word adopt because of the meaning of adopt, I know I'm getting wordsmithing here, you are going to tell the enforcement committee, this is the language we're going to be using.
>> Virginia Holtz: May I speak to that Mr. Chair? We have the ability when we come back to get new information. If we find out that that really doesn't fit, we can amend this motion, if it moves fort mid.
>> Ken Podgorsek: Let me ask this question, why the -- and I'm missing the nuance. Why the need to adopt it, why not just refer it? Why do we have to adopt it tonight if we're not entirely sure that this is the language we're going to end up with?
>> Margie Matthews: How about recommend.
>> Recommend?
>> Ed Rast: Virginia.
>> Susan Goldberg: Not to speak for Virginia, but the reason she is suggesting that is the feeling that we need to move on. So let's move on with this part of it. We're going to be talking about the enforcement part of it. There does seem to be some general agreement and this group does seem to loosen up in how it does its business than in revisiting something later seems not to be a problem.
>> Ed Rast: We have a suggestion that the motion be withdrawn.
>> No.
>> Ed Rast: Did I misunderstand?
>> We went in a circle. My question is, yes, I am concerned with the word.
>> Ed Rast: I just this second agree --
>> I was ready to vote too, and there is a City Attorney in the room and I would like to know whether City Attorney

would take a role in this. This is the question of your office. [laughter] That's right, you're in the wrong site. Neither one has commented as to the attorney.
>> Ed Rast: We'll put Norma on the hot seat when we get to the labor issues.
>> Lisa Herrick: Lisa Herrick, I've discussed the proposal about certification with Rick Doyle. Haste looked at this language. We don't know how this is going to work out in package. You know he's a real earnest person and will try to do what's the best thing and follow the law, no matter what the law is. So I mean, it's -- and I've said this before, we've all said this, recording closed session is San José that makes us all very uncomfortable. And that's it. And the steps that follow from that are similarly uncomfortable. But we're also mindful that there is a movement here, and we'll have to see what happens when there's a final decision. I know that was really not very definitive.
>> I just wanted to give you an idea of the city staff.
>> Lisa Herrick: Sure, that's appreciated. The nature of closed session, you know, you've been in closed session, the California state legislature created reasons for closed session for a purpose. And it's true that the Brown Act is a floor but that doesn't mean that those reasons aren't still important. And this proposal is going to change that. And it will just be very interesting to see what happens.
>> Margie Matthews: I'm going to take advantage of still having the microphone. Maybe an example will help. I've been in closed session where someone has been hit by a car. And I mean, somebody, some councilmember can say, that intersection is dangerous. And we know it. And that sort of thing comes out in public session, and then you have a lawsuit and you're putting the City's General Fund at risk. And that is the kind of thing that people might say spontaneously, but it puts the city at great risk. I'm guessing that is one of the issues that we're trying to protect the General Fund as another value.
>> Susan Goldberg: But Margie, my goodness, if there's a dangerous intersection, isn't the higher purpose to fix it?
>> Margie Matthews: But the person, if they know it's being recorded and they're trying to get reelected the following month, the politics gets into play. Maybe it's not dangerous. The need to get reelected, whenever they're going to be elected, to humiliate or embarrass.
>> Susan Goldberg: We are not breaking new ground here.
>> Lisa Herrick: The only thing I say none of the municipalities disclose closed session. That's the significant difference.
>> Tom Manheim: Tom Manheim, I wanted to test something with the task force that came up in those discussions. When we started thinking about closed sessions and really gone back to what's been driving I think a great deal of the concern, the example that Susan Goldberg has raised. It seems to me when you look at what's in closed session, they fall into four categories. Personnel matters, labor discussions, litigation, as we are talking about it amongst senior staff, as I start thinking about it, I don't have much concern about litigation. We've had lengthy discussion best the labor discussions, and I don't think we need to go into that again. But I wondered if one way around, addressing some of the concerns would be to try to focus more on if real estate negotiations are the areas where the task force is most concerned, to focus more specifically in on that, rather than the broad sort of sweeping, all closed sessions are -- ought to be taped. Because one of the concerns that I have heard relayed by one of the attorneys, is the mere presence of the recording leads someone to -- the fat fact that we're setting up a certification process won't stop. It's not clear to me, the city may have a rule when they choose to release it. But the result of what a judges's ruling on that almost makes the city's role irrelevant. Or the City's position on releasing them irrelevant.
>> Karl Hoffower. Just to go over the reason we were looking at the broad thing is because we had concern with an area. It doesn't take an attorney to say if they're discussing strategy, that is attorney-client privilege. As I brought up time and time again, that the county of Santa Clara is settling lawsuit after lawsuit with child protective services act where they wrongly took children. One would just set up that they have modified their policy, but I'm still interested in how litigation goes and I want to know when the time passes for that litigation to be released, but it should be released and I'm still interested in that. How many areas, only four, it's not a huge area.

>> Ed Rast: Let me ask clarifying question. Two types of staff, council appointees and everybody else is under the city manager.
>> Yes, conversation would just be about the appointees.
>> Ed Rast: Are we down to a narrow area of six people again on the personnel issues? Am I correct or --
>> Yes.
>> Ken Podgorsek: I was wondering, actually Tom, you brought up a good point, and Ed also built up a good point, we're 92nd necessarily taking a step back. There are other cities who -- I was wondering if they could do research into litigation of where closed session tapes were released through litigation. We could make an assessment of whether this is a real threat or not.
>> Ed Rast: Lisa Herrick.
>> Lisa Herrick: As I said a few minutes ago, not all of these cities simply record their sessions, have routine, I'm not aware of any litigation about disclosures of closed session recordings, whether or not they're routinely disclosed or not. I'm just not aware of any.
>> Ed Rast: I would say Ken's suggestion is a good one. Specific finding, the public interest outweighs the --
>> Ed Davis: I think we need to send some more straw, Tom is now being a good lawyer too. He has created another straw man here. And Karl really hit the nail on the head, what is disclosed in closed session is not discoverable in another civil action. Whether it's a tape recording or the testimony of somebody who is actually present at the closed session or the notes that somebody takes or the minutes that somebody takes at a closed session. If there was a real threat by litigation, imposing upon a true secret closed session, the audiotape is not going to make any difference at all. Because people already would have been subpoenaing the City Council members and their notes and the agendas and the minutes and all of those kinds of things. And that simply hasn't happened. So I don't see the audiotapes as changing the law with respect to the availability of what truly is closed. Could you try though, Tom.
>> Ed Rast: We have a motion on the table.
>> Ken Podgorsek: Call the question.
>> Ed Rast: Call the question. We agree. All right. Read the motion again.
>> Virginia Holtz: Is did motion on this piece of paper or what was said verbally by Ken? I would hope so.
>> Dan McFadden were you next to speak?
>> Dan McFadden: I just wanted to say, we're getting active in stating cases. If the government's the enemy you certainly have a right to sort of try to change things significantly. But frankly government does some good. We have a legitimate need for this. Ed is trying to get something here he hasn't gotten through courts. You know, I think that we just have to recognize that there is, the Brown Act recognizes it, the legislature recognizes it, a valid purpose for closed session. Every time we use value-laidenned terms like secret, I just don't understand. I think that's a product of not having been in a closed session. Closed sessions are very business like, very routine and there is a purpose for them. And it's agonizing for me to sit here and see this run down like this, that is editorial comments around the table.
>> Ed Rast: Let's see if I can clarify. Dan and then we're going to call for the question. Is your objection and staff's objection to the idea of recording closed session or the disclosure of closed sessions? A lot of other cities report closed sessions.
>> Dan McFadden: They record, but when we call around and ask what they do with them, they say we sort of put them in the warehouse. Eva, you may want to comment on this. I think we're willing to try it but I know in certain areas, clearly in labor areas, it's very much a problem for us. It plays hell with the whole fair practices and negotiation. I mean, it's going to put us into a lot of grief. It's not going to benefit the city. I see no benefit. I don't know what the benefit is for the public of having release of labor tapes. Maybe, on the deals there is a benefit. Maybe on litigation, I don't know the option there. The option is to go to the court show relevancy. We're sitting that aside so I shouldn't speak to that. I just feel like this thing is -- we're not balancing here in some folks are trying to balance. But the idea that somehow this is secretive and we're withholding information purposely, I don't know, I just can't

understand where all that's coming from. I just can't. And I'm sorry.
>> Ed Rast: We have a motion on the table. Do we want to repeat the motion, please? Yes, let's -- Eva or Lee.
>> The Clerk: The motion is to record closed sessions and to refer the method of -- or the process of certification including how long to keep the recordings, is being referred to the enforcement committee, we will come back with a proposal, and that the further intent of the task force is that the City Attorney is the certifying element and that the enforcement committee can come back with further recommendations. Now, I am personally not sure if the language that was photocopied was included as an amendment or not. I would ask for clarification on that one.
>> Ken Podgorsek: The motion is that we adopt the language in 7A.
>> Ed Rast: Does the second agree?
>> Yes.
>> Ed Rast: Call the question for the vote. What we're voting on is basically the recording.
>> Ken Podgorsek: Recording and referral.
>> Ed Rast: And referral. You got two things you're voting on. Everybody understand clearly? All in favor? [ayes]
>> Ed Rast: Opposed? Two opposed, abstentions? The other passes and will be referred to the enforcement committee. I have a question for the task force. If the enforcement -- it's referred to the enforcement committee. Is one of the possibilities for the enforcement committee to come back and say not to release?
>> Sure.
>> Ed Rast: It's an interesting, you know --
>> Ken Podgorsek: You know, there's going to come --
>> Virginia Holtz: Let's not go there, please. We need to move on.
>> Ed Rast: We're late.
>> Ken Podgorsek: Mr. Chair. I agree.
>> Ed Rast: Okay, Susan. We've a length of time retape tapes.
>> Susan Goldberg: Length of time to retain closed session tapes. I was ready to have that discussion but wasn't there a -- good, we're keeping going.
>> Ed Rast: Audiorecording labor negotiation.
>> Susan Goldberg: I don't really understand why that's on there. Because we've now decided twice that we're going to record closed sessions. And labor is in closed session. So I'm puzzled. We've heard the oaks, we've now voted twice on this subject.
>> Dan McFadden: Can I speak to that? I did ask that we consider that and I was told that it would be considered later and there would be a time and a place. And so I withdrew my discussion at that point. I don't have any problem with recording labor sessions as long as they're not released. But then that begs the question, why record them if you're not going to release them? I'm happy to stop with the first part of that and I just think maybe that goes to the enforcement group, where we deal with whether they should be released. But it is one of the areas that is extremely problematic for us. I see no benefit to that.
>> Ed Rast: Any task force comment?
>> Karl Hoffower: I have a question. Karl Hoffower. Who was it when the Mercury News received these minutes, who is it that takes these minutes and keeps them?
>> Lisa Herrick: Lisa Herrick. The city attorney's office.
>> Karl Hoffower: What do you do with these minutes?
>> Lisa Herrick: Not much. When we moved from old City Hall, there were a whole bunch of minutes that were available -- I shouldn't say available. There we're whole bunch of minutes that were retained for a long time.
>> Karl Hoffower: And we don't know where the records manager is?
>> Lisa Herrick: I have no idea.
>> Karl Hoffower: But what's the purpose of keeping these minutes if they're never supposed to be disclosed? Wass

the purpose of it then? You're already keeping a record of a closed session that currently we are not supposed to be able to find anything about, why are we keeping minutes?
>> Lisa Herrick: I'm not the minute-taker so I can't-the -- thank you. Thank you for saving me.
>> Norm sato, City Attorney's office. One of the purposes for keeping them is in case there's litigation on closed session subjects. Then those minutes are available to verify what happens in closed session.
>> Ed Rast: We have as an agenda item the item, labor negotiations.
>> Alex Gurza. I have a lot to say but I'm going to spare the task force the comments. I'll save my comments when they come before the council. Needless to say we have significant concerns in labor of the simple act of recording. What that does to the negotiation. I have been in hundreds of closed sessions over the years and I can tell you in labor negotiations it isn't the matter of secrecy. I agree, the term secrecy, it is a value-laiden term. I don't know what analogy to give you, maybe a sports analogy maybe. One sports team would love to be in the locker room of the other team as they're designing their game plan. And I know the issue of well, when would you release it? The question is, I think that question needs to be thought about. When the reason for confidentiality, I'm not sure. Because usually, let's say for example, to keep my sports analogy, that you got to be in the locker room of the other team, right? The next team that's going to play that team would love to have heard how that worked out, how labor negotiation work. We have ten unions, they cycle over and over again. I'll spare you with that. I could go on and on. The task force will make its recommendation, the council will decide if they think it's the best in the milk's interest. Personally, I don't think it serves the public answer interest to release closed session tapes on labor. I don't think what could be gained from that but it is something -- the decision that the council have to make.
>> Ed Rast: Susan.
>> Susan Goldberg: I think we're done right?
>> Ed Rast: No, providing decisions of closed session in open session.
>> Susan Goldberg: I'll have to come clean. I don't think I have any notes on this. I think what we had basically recommended was that after a session was closed, when they went back into open session, they had to say why they had gone into closed session. Ed, can you help me here? I honestly don't have any notes on this. I apologize.
>> Ed Davis: Referring again to the infamous page 12 of attachment 3.
>> Susan Goldberg: Thank you. Oh, here it is. Beautiful.
>> Ed Davis: Section B, it's pretty complicated, so I'm sure this will only be about an hour's worth of discussion. After every closed session a policy body must report any certifications in open session.
>> Susan Goldberg: He's a lawyer, there you two.
>> Ed Rast: What certifications?
>> Ed Davis: Certifications relating to the City Attorney. Is that what we're talking about here?
>> Susan Goldberg: Actually, no. I see it isn't. No, but I don't -- you know what? I'm sorry, I don't have anything here.
>> Ed Rast: Lisa Herrick.
>> Lisa Herrick: Actually, if you look at, right, section C which is from B -- I'm sorry, from number 6 on the previous page which unfortunately you don't have, both sections C and D address disclosure. The Brown Act require certain disclosures be paid after there are closed session discussions. We've talked about some of them. When litigation has settled, when a real estate deal is closed, labor negotiations. So those disclosures are generally made orally, and I think the proposal, a written summary of the disclosures made at the meeting be made.
>> Susan Goldberg: That is it, thank you.
>> Ed Rast: So do we have a discussion, motion on it or --
>> Susan Goldberg: No.
>> Ed Rast: We adopted it previously. That means we're done. Ken Podgorsek.
>> Ken Podgorsek: I believe we can get through this section too. I don't believe these are very complicated. I do want to make a disclosure to the task force that both Ed Rast and I have heard on a street level that several nonprofits

were concerned about the NGB sections of our conversations and things. I have been in conversation with Patricia Gardner, at Silicon Valley organization of nonprofits. I am pursuing this and trying to see if we need to clean it up or if it's already there and I will report back at a later session. Because our intent ask very clear. Our intent is to create sunshine NAACP this area without overburdening or creating a situation where the nonprofits have a very large burden to do the sunshine. So we all know, we know what we mean, we need to make sure everybody else does. So I just want to disclose that I am in those conversations as is chair Rast. We're going to be talking about four items here tonight. The fourth item I will discuss. But I'm going to -- I'm going to ask Ed to discuss items 1, 2 and 3, as these are items that he is very familiar with.

>> Ed Rast: The issue that was brought up by the City Council about stacking issues, and here's what my suggestion would be. Is that you have whichever council committee or commission is responsible for particular issue, that they in turn give a ten-day notice. And then the other one, the second ten-day notice would be before council. Any other notices would fall under four days, so that in effect on routine matters, you probably get it done in 30 days, after you circulate it a few times, you get it back in 45 days. As an example, plan, it would go to rules, four day notice, council for ten day notice, and roughly it would be done in 30 days. For example, something coming through parks recreation, ten-day notice. Senior, youth, one of the other commissions, four-day notice, rules for four, two ten-day notices and everything else would be shorter notice. So you'd be able to keep it within 30 or 45 days in most cases, unless something very unusual happened where there was substantial change and it would have to be brought back out again. But I think that keeps it within reasonable efficiency, at the same time, it balances off the issue of sunshine and that people would have -- the ability to comment before it's finalized in the council committee or in the commission before it goes to City Council.

>> Ken Podgorsek: Mr. Chair, pay I comment?

>> Ed Rast: Yes, go ahead.

>> Ken Podgorsek: The -- it is our belief in the public meetings committee's belief, it is not the intent of the sunshine task force to gum up the works of government but to create an openness and a sunshine. And it was pointed out to us that when you start looking at that matrix that we created, you can take a very routine idea and pretty soon you're out three or four months that something really 20 days is satisfactory. So what we want to do here tonight is not necessarily craft the language. We'll leave that to the attorneys. But we'll show the intent of the task force that our goal is that when an item has been out, you know, for 20 days, you know, we've exhibited enough sunshine, and it is okay, as long as there's not a substantial change to the item, to user reporting and disclosure periods beyond that, so that most city functions can occur in, you know, 20- to 45-day window.

>> Ed Rast: Any questions or discussion? Yes, Joe.

>> Joe Horwedel, director of Planning, Building, and Code Enforcement. I appreciate the explanation of how items move through. For Planning Commission items we typically notice those, we do a joint distribution of the packet so the public council items is being distributed at the same time at the Planning Commission, we do a supplemental memo. I wanted to clarify, that we weren't looking, in the case of major reversal of the Planning Commission, that we weren't going to have a ten-day lead time for supplemental memo to the council stating what the Planning Commission did at their meeting. That would be a major change in our process, and as Mr. Podgorsek was saying, really stretch things out.

>> Ken Podgorsek: You're saying the supplemental memo that basically describes the action that the Planning Commission has taken but not a substantial change to the original memo?

>> Correct.

>> Ed Rast: Tom Manheim.

>> Tom Manheim: There were several exemptions that were approved by the council that we could go over if you want but that was one of the exemptions.

>> Dan Pulcrano: Joe, Dan Pulcrano. I was wondering if you could just let us know what type of recording minutes,

broadcast do you currently have stat Planning Commission?
>> Planning Commissions we do audiorecordings, we're actually streaming it out on the Web right now, using the same technology, we don't have video, we don't have the video tech staff that we have for the council now.
>> Are they video streamed or audiostreamed?
>> Both.
>> Ken Podgorsek: When I stated the concept of 20 days, you know, that doesn't mean that 14 days is a bad concept, either. It just means that the idea is that you've been out enough that everybody's had the opportunity to review it. And the other thing that would concern me, you're right. A supplemental memo reporting on the actions of the Planning Commission is not a substantial change. It would concern me though, if after, and this happens occasionally, after a Planning Commission ruling, staff goes back and makes a substantial change to the original memo. Then I believe that they peed to have that ten days all over again.
>> I definitely would agree with that. I think that was some of the discussion out of the Duckett way project. We didn't do a good enough job of explaining why that was occurring or not. That is a very fair request, fits in with policy 620, that we've come with.
>> Ed Rast: Our view is if two ten-day notices is better than what is happening now, it would happen with other commissions and council committees would make sense. So does city staff have any comments on this? Does this answer some of your concerns or the mayor's office concerns? Did you want to talk or --
>> I do not.
>> Ed Rast: Okay.
>> I have no comment.
>> Ed Rast: No comment, okay.
>> Ken Podgorsek: Mr. Chair, we'll need to wrap that up into a motion but I'd like to do that after discussion on the exemptions.
>> Ed Rast: Do you want me to or --
>> I can leave it to the task force. I can answer questions or just walk through the exemptions.
>> Ed Rast: Why don't you walk through.
>> There are nine of them. Eva if you could pull those up. It is in your packet as well, while she's pulling it up, it's council memo -- a memo to the senior staff dated February 15th entitled council agenda and study session process. I'll very quickly go through each of the exemptions. The first one was the one the Planning director was talking about. Provided in the exhibit memo, that would simply be the Planning Commission meets on a Wednesday, it's already on the council agenda for the following Tuesday. The only thing reported out essentially is the Planning Commission action, what the vote was, if there was any significant change then it would be pulled, there would be more noticing. Contract bid waters or procurement contracts where the initial memo was already distributed. And these again, the memo that is -- that meets the noticing requirement conveyance all of the scoping and details of the project. The memo that would not -- that would come out later is where you've had a bid opening and all that's included in that is, who the bid is being awarded to, and what the bid price was. Supplemental memos where additional information has been received after the initial memo was released --
>> Ed Rast: I think Bob has a question.
>> Bob Brownstein: I have a question on number 2. What if the bid is being challenged?
>> I don't know the answer to that. If the bid is being challenged, they would normally bring that -- let me check. I'm not sure. I'll get back to the task force at the next meeting on that. Supplemental memos where additional information has been received after the initial memo was released by providing that supplemental information you're giving the council the opportunity to receive the information and determine whether to hold the hearing or defer the matter. And again, I want to stress, these tend to be not -- nothing that would be a substantive change. In all cases if there's a substantive change to a recommendation, then the item would be pulled and re-noticed. Emergency items may be

added to the agenda, we have discussed that at the task force. Grant application memos, where the administration needs the council's authority to submit the application and the grant deadline doesn't allow enough time.
>> Ed Rast: It sort of falls in the emergency provision.
>> Different kind of emergency.
>> Ed Rast: You lose the grant, that makes sense.
>> In this case, what tends to happen, committees meet, the packet, it's all reported out to the council. In certain cases there are items that need council action, and they're simply cross-referenced. And it's that process of cross-referencing them, where the information has already been out at a committee level, it's been discussed and thoroughly noted and vetted. It simply needs the council to -- council action. The --
>> The Clerk: Tom, let me help out a little bit with that.
>> Thank you, Lee.
>> The Clerk: That is primarily the rules and open government meeting minutes. Turning around the minutes in a couple of days is practically impossible. But there are times when the council does ant to take some action relating to something that was on the rules committee agenda. That's what Tom was referring to, we call it a cross reference, he'll cover in a moment.
>> Then number 7, I might have to rely on our city attorney's office for help with this, council action is required to satisfy legal deadlines. If you have questions I'll leave it to Lisa to wrestle with that. Item 8 --
>> Ed Rast: I think we had a question from Mary Ann.
>> Mary Ann Ruiz: I think my question was for financial matters, how can we -- and you may have answered this question, possibly. How can we avoid situations, for example, where a group is asking for $500,000 and turns it to $1.2 million. Would that fall under the realm of financial matters?
>> The Clerk: That was not the council's intent. It actually was Councilmember Liccardo who required this be worded this way. Certain items of a public nature, something a state of emergency and the council needs to act quickly because we have a fire, flood or what have you. We could have a state of emergency relating to a financial matter but it would have to meet the test for less than 24-hour notice.
>> Ed Rast: What you're talking about is a financial matter relate hing to preserving public welfare. Not a separate financial matter --
>> The Clerk: I really need money, you have to give it to me because I'll need to close my doors tomorrow.
>> This is not the grand prix.
>> Ed Rast: Not the grand prix.
>> I'm trying to understand why that would end up needing an exemption?
>> We just ran into this, good enforcement, we applied for a grant, we are the local enforcement agency for our tire grant. We would be able to administer the tire owners in the City of San José. We forgot to put in that delegation of authority, we had to go back to the council to have them reapprove that. We were trying to get that back onto the agenda, sometimes there's things like that that happen where the lines are just so short, and we've run out of the room to do it. And so that would be an example of that. We still did a ten-day I think or we did the minimum to get it on the agenda but it wouldn't have met the normal sunshine rule.
>> It's the exception, we know grants are coming and we're working on them.
>> Things happen.
>> Councilmember Chirco: Thinks happen, yes.
>> Susan Goldberg: You know you can't make it, you get a call that says, we didn't have many applicants. We're going to extend it a week. Occasionally things will happen that you weren't aware of it. But you want to take advantage of it.
>> The Clerk: I wanted to add one more thing if I could. A lot of the grants if you don't file, you get the permission to submit the grand application, you've already -- it's no longer an option to you.

>> Item 8, matters that require a full City Council mission commonly referred.
>> The Clerk: Requesting that the committee take a position of support or opposition to a particular bill. And then we want to get that to council for their confirmation as soon as possible so we can get that information up to the capital. Another one is appointments to boards and commissions and regional activities that the city has, the next week on a council agenda, and informallize those committee -- informallize those committee appointments, make sure we need those committee members present to make sure we have a quorum, or those are the typical kinds of one-week turn arounds we might, now we call them a cross reference, we could put them on the agenda as the item is properly placed.
>> Ed Rast: Bob Brownstein.
>> Bob Brownstein: Bob Brownstein. Are there any limits to what can be classified as a one-week turn around item? In other words, can rules make anything a one week turn around item?
>> The Clerk: They probably could. So far, it has not been the desire of the chair, who is the mayor, to not put enough sunshine on things. So if for instance the committee was considering something like they did yesterday, then Mexican heritage plaza and the Mexican heritage, they referred it out for ten days. It wouldn't be sufficient sunshine so they moved it another week.
>> Bob Brownstein: The problem I have on this is we shouldn't make judgments based on a special item at any one given time. Whoever is on that committee five years from now could make virtually anything a one-week turnaround. I don't have any problems with the two examples that you gave at first with boards and commissions and trying to deal with legislation. I just wanted to see language that has something constraints there.
>> Ed Rast: Mary Ann.
>> Mary Ann Ruiz: That was a good point there. Any discussion?
>> Ken Podgorsek: It doesn't conclude our concerns.
>> Bob Brownstein: I don't have language in my head now. I can come up with something if we want to put suggested language. I think at this point we can indicate concern.
>> Last one is a second reading of an ordinance where there are no substantive changes to the ordinance.
>> Ed Rast: Margie.
>> If you scroll down underneath the additional section, there's a small paragraph that says due dates for councilmembers have not changed, they're due 21 days before before the end of the period. Does that mean they're -- in other words, this is a memo to senior staff, these memos have not yet gone to the City Manager's office for review. That 21 days then creates the windows to review, and then it's released, 11 days.
>> Okay, they're not memos from the city council. We had referred to those as --
>> council memos are memos going to council, as opposed to the other way around.
>> Ed Rast: Any further questions? Description of agenda items. The only one I noticed in looking at this, we didn't -- we had in the public meetings area the question of when a councilmember puts forward a brand-new piece of legislation in the council memo. We didn't clarify that, four days in responding a staff report, what we didn't talk about was the brant new councilmember comes forward with a brand-new piece of legislation, it would make sense for the ten-day period not the four. Now, the question I've got to staff is do we need to -- is that within the scope of what we're talking about or do we neat to agendize for that particular issue? Lisa.
>> Lisa Herrick: It's not listed very well.
>> Ed Rast: Why don't we agendize it for the next meeting? Otherwise we only get four days notice otherwise. Tom.
>> Tom Manheim: One thing that might help, in your understanding of City Council process, nothing can get on the City Council educated without going through the resumes committee meeting which is six days prior to that meeting. So I think to a certain extent your concern about somebody coming out, a you may still want to look at some additional discussion in. Blue? We refer to them as the blue memos, blue meaning late.
>> The cost benefit analysis. Yes, that's right. This has to be the second item, okay. We can just put that as a second

item, come back and look at it. So Judy.
>> Judy Nadler: Maybe this isn't necessary but it's beginning after tonight to sound like it might be necessary to have a glossary of terms. So frankly, this is all governmentese. I think we eighth to have a list of terms as to what those things would mean, which is part of whatever we send forward or make it a more user friendly document.
>> Ed Rast: That's a good suggestion. All right, let's see, you want to make a motion?
>> Ken Podgorsek: I wanted to before I made a motion, I see the exemptions that are -- that the council have adopted for themselves as basically satisfying the concern about stacking or basically gumming up government. Do I have an acknowledgment that most people see that?
>> Ed Rast: That's what our policy intent was, later on if council wants to go back and change some of their rules, it doesn't get lost in the exchange.
>> Ken Podgorsek: Mr. Chair, can I put that in the document. Can you take a second and wordsmith it for me?
>> Ed Rast: Yes, I can. The intent of the tasks is that the public be given two ten-day periods of time, the council committee or commission that handles that particular problem, before the council itself. All other meetings would only have to go with a third day notice. Unless there was a substantial change in which case they would renotice for ten days. And the intent would be that the items would get through the process in somewhere between 30 and 45 days, so in an efficient manner.
>> That's great word submitting. Beginning part of my motion. The third is upon review of the exemptions as passed by the City Council, we agree with the exemptions but have concern about exemption number 8.
>> Ed Rast: 2 and 8. Bob had concerns about 2.
>> Ken Podgorsek: Concerns about 2 and 8. They may need further definition to avoid abuse.
>> Ed Rast: Do we have a vehicle? Discussions public comment? All in favor, aye, all opposed, abstentions, peace.
>> Description of items, Mr. Chair.
>> Ed Rast: One of the concerns that a lot of people have in the public is agenda items. We use our description of duct Way. There was no clear definition of what the item was. It was a use of the two acre real, the riparian corridor, setback exception, and I believe that there was going to be a large number of orange trees cut down. So I would like the description a very clear, single-line distribute on the agendas items to say, any time there is a request for an exception of city polls, for instance on Duckett way, it would have said, the applicant has accepted the following, to try to figure out what exactly it is. And also the public would be able to notice those that they had a particular concern about, they would be looking through the item and they know they would have to read through whole thing. I think Joe and Laurel bought it, felt that would be San José they, have agenda items extend beyond the relevant length they are now, which is pretty long. I think we should be able to accomplish it, it not only provides sunshine to the public, and also it makes it easy for staff to council and the public to understand what the issues are that they're making an reception to policy. Susan.
>> Susan Goldberg: Why would this only be for items where there would be some sort of discussion on everything.
>> Ken Podgorsek: Away I plan to put forward is a plan that says agenda items need to be agenda items need to be written in clear, concise and understandable -- understandable language. And that any exceptions to standing city policies be listed account agenda item. The idea is, to use the -- as a matter of fact, I'll make that a motion. That's my motion. The --
>> Ed Rast: We need to repeat it.
>> Ken Podgorsek: Need me to repeat it?
>> The Clerk: Yes, please.
>> Ken Podgorsek: I move that description of agenda items be in an understandable language for the -- I lost that original motion. Clear and understandable language, thank you. Clear and understandable language.
>> kind of look the motion? Agenda items can be all over the board. No, agenda items are clear and understandable. If there is many the idea is here, that's my motion, the idea that Ed is trying to get across, in that

particular example, the took the community, residents that were there a lock time to figure out, you know, there was all these exemptions and things. A couple of bullet points that said, exemption to city policy A, exemption to city polls B, would have made it very cone size. The report was real, real late so you, that's my motion.
>> I second.
>> Ed Rast: Any discussion? Public comment? Joe.
>> Joe Horwedel, director of Planning, Building, and Code Enforcement. I concur that I think being able for the public to up where policy issues are being raised, I think it will be good for the task force or some other group to put together what are the lists though of policies, two-acre resume is a general plan policy. Not all the same stature of the two-acre rule. Some guidance would be good as well as residential guidelines, and ought the Nits is a part of that but the two riparian corridor policy, major, agenda.
>> Ken Podgorsek: Mr. Chairman, I don't think it necessarily is to the about the you know to get to the detail, the details in the report. But I think you hit the buoyant, it's a major policy. So if there's going to be an exception to the general plan You say sense to the a quick section. It might refer on the agenda where that exception description is. So somebody can look at the point and go to it.
>> The concern I think, would be the reference conceptual of tom's concern that the agenda item will not be very long.
>> Ken Podgorsek: The goal here is bullet points. We're not going to reinvent the Bible. Mao for whatever it's word we understand your back now.
>> Ed Rast: Motion discussion? All in favor, aye. Opposed, no. Passes.
>> Ken Podgorsek: I want to submit to you a letter that had been given to Ed Rast. It became apparent to us just a couple of weeks ago that it never mate it to the task force. We ask that it be submitted, approximate without going rail into the whole tire letter. Council policy 630, definite we both wrote a very short memo on this. The reality is the vast majority of items, especially those, are appealable to the City Council. But there is a small amount, very few amount of things that are not currently appealable to the City Council. We would like to close that loophole. We think that it serves the interest of the public and in the interest of the applicants, to have the right to go to their place on the council. They're not appealable because the general feeling is that the council's hands are tide. That they can't really act in a manner that would satisfy you know, the people that would be appealing it. That said, whether their hands are tied or not tied, doesn't mean that either somebody who objects to the proposal or somebody that supports the proposal, shouldn't have the right to have their day in front of their elected officials.
>> Ed Rast: Lisa Herrick.
>> Councilmember Liccardo: There might be some situations you're trying to address or some loophole you're trying to address. The Hensley historic distribute, isn't the right one to address. My conversation with my colleagues in the city attorney's office, this basically relates to a -- state and federal -- let me back up a little bit. This if everyone read the letter it would be easier to kind of start from, really start talking about the specifics of the letter. State and federal law have fair housing requirements. And I think Joe may need to help me out here. Because he's really familiar with this. My understanding is that there are requirements to make reasonable requirements for those persons who should be entitled to live where they want to live. Really, there's a process issue versus, this really is an issue about, it's process. And maybe I should let you jump in.
>> Joe Horwedel. Director of Planning, Building, and Code Enforcement. I think the question that Ken asked is a good one. Looking at decision-making and where the ultimate decision rests with all the different processes and that is something we've looked at for our permitting like downtown high rises instead of being appealable, it is a director's decision instead of going to the Planning Commission, does go to the council because of the significant magnitude of those decisions. At a 20,000 foot level I think that's a good discussion to have. I will have to concur that with the reasonable accommodation process, it is a good process, we have taken that through a council committee, to drill down through reasonable accommodation. There is a lot related to it. Reasonable accommodation is not created to

provide processings for neighborhoods. It is created to provide protections for people who need accommodations under the federal law, fair housing laws. And that is a very important distinction. So that's the comment about the council's hands are tied, my hands are tied to a great deal also. So that's with why I would recommend to take it to a council committee. The original point is important to talk about. Are there decision that the council should have the final bite out of that apple or not.

>> Ken Podgorsek: I know Joe knows this well, I'm not an amateur on this particular area of the law. I've actually with the Planning Department written conditional use permits, that have made residential care facilities neighborhood-friendly. And I'm not known as necessarily being against them. This is a due process situation. I do believe, very strongly, and the motion I will put forward is that items of significant community interest is to find under item 630 should be directly appealable to the City Council. Whether the City Council makes a decision that a reasonable accommodation qualifies under that provision or not to be really honest with you is up to the City Council. I can pretty much tell that you what's before the City Council they will probably have a lot of people that will have the discussion that it is an item of significant community interest. I'm willing to put that ball in the City Council's court. What I'm not willing to do, and no offense, I'm not willing to let them punt. If they want to make -- if they want to make the decision that this is not -- that's not an item of significant community interest, we're not talking, the example in that letter was reasonable accommodation. We're not talking about that. What we're talking about are these items in general. And I do believe, based on some conversations I had, there are some councilmembers that can, as uncomfortable as it might be, might also believe that items, reasonable accommodations are items of significant community interest. This is a difficult topic.

>> Ed Rast: It's the other one I think we had a long discussion on, Planning did a tremendous amount of great work on it, was the issue of alcohol.

>> Ken Podgorsek: As another example.

>> Ed Rast: This is another example. I think if this was in place prior it would have been brought up to the council. We would have been -- taking a look at it earlier and we would have been able to come to that same conclusion which unless there had been a lot of pressure from the community, we would not have come to that conclusion, which I think was a great process we went through, but this allows for the public to bring it up. I know the chamber was supportive of that solution because it got us around a problem that -- it was a great community effort to solve a very difficult problem and also increase the economic viability of a lot of the businesses. So I think that's a way that we can get some of these things up ahead. And then just not have them fester for a period of time.

>> Ken Podgorsek: I'm willing to put a motion on the table. I move that we add to the public meeting section of the ordinance that items of significant community interest as defined in council policy 630 are appealable to the City Council.

>> Ed Rast: Do we have a second?

>> Second.

>> Ed Rast: Discussion? Question?

>> Margie Matthews: Margie Matthews. Seems to me anything is appealable to the City Council in one way or another.

>> Ken Podgorsek: Not in this case.

>> Margie Matthews: Well, the rules committee decides what goes on the council agenda. If you are right, and say councilmembers punt, they can. I mean, they can, if they choose to make an exception to any county policy they can. But I would say put this in the rules committee. Which is the City Council and sets the agenda for the City Council. But I really kind of think they actually can do that.

>> Ed Rast: We agree with you but I think this will make it really clear.

>> Ken Podgorsek: I think putting it into the ordinance it makes it clear that items that, when it comes to -- understand the concept of items of community interest is not a huge universe, it's well defined.

>> Margie Matthews: Well, to anybody who has an important issue, that's significant. To that, two neighbors are a community.
>> Ken Podgorsek: I don't think that's the way that -- I don't think you can interpret council policy 630 that way.
>> Joe Horwedel, director of Planning, Building, and Code Enforcement. The policy does direct to the council the discretion -- it requires us to work with the council offices so if there's issues going on in the community that we might not be aware of that they can identify and say we really do think belongs as a significant issue. The codification in the code standpoint about how you bring certainty around that, when that has to happen, somewhere at the front rather than the back end of the process. And to your earlier comment, everything is appealable to the council. Site development, council, other than high rises, do not have an opportunity to bring that up and make a decision on it. Some decisions have the ability for the council to pull any item up through it, which is one of the complaints we hear from the cities, people trying to get things done, you're never knowing if you're done until you got a building coming up. Working through the mechanics is what is the certainty of it. Is it a project of community interest and therefore these additional rules apply to it or do they not.
>> Ed Rast: If they didn't agree on it would it be declared a significant community interest so you have some control if not everything gets through that only ones that have significant interest.
>> Go ahead.
>> Are these all about land use issues?
>> Ken Podgorsek: There's -- most of the things I think about are land use issues. They might also apply to city policy and city development issues. But the reality is, I'm going to be the first one to tell you, most of these things are already appealable. This is not a situation where there's a human universe of things that aren't appealable. What we're trying to do is close up the door and make it so that you know, you can't not do it.
>> Ed Rast: Tom Manheim.
>> Tom Manheim: Tom Manheim. Staff has been thinking of this proposal. To answer your question, we are not aware of--- we can't frankly think of things that wouldn't be at the council other than perhaps some of the things that Joe is talking about. But if it's of significant community interest it goes to the council almost without reception. It starts there. It's not a matter of appealing it. It goes through committees and goes to the council.
>> Ken Podgorsek: I'm looking to close the exception account not the rule. The vast majority is already there.
>> I'm very uncomfortable about voting on something that involves this one particular group and I don't think I can do that.
>> Ed Rast: We use this as an example, we can go back to the alcohol issue, there are a whole series of things that fall into this category.
>> Ken Podgorsek: As I said, as a neighborhood activist, I've created situation where these work. The other thing too is, it's also possible for an applicant, this applies both ways. The other thing to be aware of when it comes to reasonable accommodation, and a lot of people aren't aware of this. In this city I think over the last five or six years, there have been 84 -- 84 reasonable accommodation applications. Of the 84 reasonable accommodation requests, four withdrew their application, 80 were approved. None have been turned down. I'm not saying that's right, wrong or in between, I'm saying it demonstrates the lack of due process. I may have no effect whatsoever on this issue. But citizens have the -- should have the opportunity for due process.
>> Ed Rast: Lisa Herrick.
>> Lisa Herrick: You really can't use reasonable accommodation as an example. The city has no reason to not grant reasonable accommodation for persons who request it. Otherwise, they would be in violation of state and federal law. As I started out to say, you may have a concern, but it's not this one.
>> Ken Podgorsek: I'm not going to argue. The city attorney's office and I, I agree about 85% with that statement. There's about 15% I don't agree. I have land use attorneys whom I've consulted, and the city attorney's office and Planning Department over the years have choosen to disagree on this issue.

>> Ed Rast: There are examples where the director's hearing is done or the plannings, there's where it stops. Joe can give some more.
>> I guess my earlier agreement with where the direction is going, I think you need to start at that time matrix level, these are the kinds ever decision that gets made, remember we're a city of a million people, we're not Saratoga. Single family houses should not go to the council for appeal. They do that in Saratoga. Just keeping the things in context and we're continually being pushed to do things faster and better. If I'm sending everything to council that's appealable, it's not going to happen, everything is going to take four years to get it done. I think the council has to weigh in and make a decision on it. That's the right call.
>> Ken Podgorsek: I very carefully crafted the motion, the council can make the decision that reasonable accommodation is not an item of significant interest. They can do that in public and the public can have that discussion with them. What I'm saying though, is that let's create a situation where any -- you know, where items of significant interest, it's a clear question. That's what I'm asking. The council can make decisions on a case-by-case behaves.
>> Ed Rast: Tom Manheim.
>> Tom Manheim: Tom Manheim. I guess I need a little bit of, it would be appealable to the council, that does not give the council the option of deciding if something isn't --
>> Ken Podgorsek: The intent of the policy is the council and the Planning Department to determine if the item is an item of significant community interest.
>> Ed Rast: They say no, it's not, it has to go.
>> Ken Podgorsek: The community has a chance to state their case.
>> Ed Rast: Bob Brownstein.
>> Bob Brownstein: I am supporting this because what I have learned is how much it matters to people, that conveying an understanding of tear concerns, even if they don't get the answer they wanted, the fact that they were hurt, that somebody could indicate comprehension of the final outcome you might get through a simple administrative statement. And since one of the clear objectives of this task force is to try and fake the way the city operates, so as to improve the sense that representation is real, and increase trust, I think it's useful to try and create a venue where people can get that feeling. Even if, at the end of the day, the outcome is still going to be one that they're not happy with.
>> Ken Podgorsek: Mr. Chair, I'd like to call the question. Then I will withdraw my call.
>> Karl Hoffower: Karl Hoffower. I just want to ask what the City Manager's viewpoint is. Is this something you would see as a situation, this would be something that we're going to be closing a loophole and helping here?
>> This is not a big universe, consistent with what Bob said, if somebody wants to make an appeal to council, bam. I don't think we have any objection of bases for that.
>> Ed Rast: Make sure we have public comment, we don't have any more applicant, all right. All in favor? [ayes]
>> Ed Rast: Opposed,.
>> The Clerk: Mr. Chair, if someone calls for a question, that's a motion, primary motion that needs to be voted on. If that's happened a lot tonight and we're realm not following good form.
>> Ken Podgorsek: We're not just doing it right.
>> Karl Hoffower: Robbie's rules instead of Robert's? [laughter]
>> Ken Podgorsek: Believe it or not, I believe that now concludes public meetings. We're done.
>> Ed Rast: No, except for next week.
>> Ken Podgorsek: Except for the thing the chair put on the agenda. All right, we got one tiny thing.
>> Ed Rast: Update on the status report to the City Council. Okay, let's go. Basically, you know, it's when are we -- I'm not sure when it's going to council. Lee, do you know or just -- it went to rules.
>> The Clerk: That went to rules medicate yesterday.

>> No, March 28th.
>> The Clerk: Mar 28th, thank you.
>> Ed Rast: When is it going to go to council?
>> The Clerk: I'm sorry, I'm blank out. I'll have to get back to you.
>> Ed Rast: It went to rules and then it was going to go to council.
>> The Clerk: I can't remember what the final action was on it. Dan.
>> Dan McFadden: It was listed going to council, not this coming Tuesday but the following. And I indicated we may or may not be ready to have it go then. And we would sort of sort that out this evening.
>> Ed Rast: Okay, so we'll work it out then. Okay, all right.
>> Dan McFadden: If you're happy with it, no changes, anything you want to add to it, it's lifted and we could move it forward.
>> Ed Rast: We discussed it at last meeting.
>> Virginia Holtz: People would e-mail Sheila if we felt we had some other last-minute.
>> Dan McFadden: I didn't get a chance to talk to Sheila today, and I didn't know exactly if anything had come in so I just said we -- that we would know this evening if you wanted to move it forward or delay it a week.
>> I believe I did see a one-page report to the committee correct?
>> A one-page. The question was when did she go to full council, is all.
>> The one-pager?
>> The summary -- if I could clarify, the summary in that memo, in each section, there was some outstanding issues that we were waiting to be addressed so we'll have to update that before we go back to council. So we will-d I was just looking at my calendar. It looks to me like the soonest we could get there would be probably the 24th, if I'm looking at my calendar correctly, given -- we've got some work done on the memo. It will then have to be sunshined ten days or 14 days. I'll have to go back and check.
>> Ed Rast: Eva.
>> The change was from business day to calendar day.
>> If it says three business days, it should be four calendar days. That was the transition.
>> They just -- they changed it.
>> Ed Rast: So that makes it on Friday instead of Thursday.
>> Ken Podgorsek: That was one of my arguments about that, and actually I -- I actually suggested that we change it to 4 calendar days but I was told to make it consistent. But the argument is no, it is not an uncommon practice that sometimes we have business days and sometimes we have calendar days. The public meetings committee, their intent was we didn't want any 5:00 p.m. memos out. So if we were going to do it based on calendar days, we wanted four days so that the memo would be out thrust at 5:00 p.m.
>> Ed Rast: Marjorie.
>> I may have been absent on the day that the noncity government body and, you said that the nonprofits have some issues which you can work them out.
>> I'm going to try to see if we can do that. To be frank with you, it's not our language. In our language, we define what we consider to be a city service that meets the criteria that then where they would be defined as a nongovernment body. What I'm getting feed backs from the nonprofits is that the City of San José has a much broader sense of our version of what a city service is. They're afraid that our language is not going to be what's used, it's the language as one determined? By this City Attorney, and our item is to give you, somebody at the city attorney's fault, but give you an example, it was our intention that a nonprofit that met that, $200,000 to put on theatre, notwithstanding this meeting, the city is not in the business of putting on theatre. And so you know, our intent was that that is not necessarily an -- that's not an NGB. But if they received money to manage a building that they house their theatre in then the management aspect of that building would be -- would only be the thing that would be

before something. The challenges are broadening is that the nonprofits feel it's a lot broader than our original intent.
>> Lisa Herrick: I would suggest if you are having conversations with nonprofit people and they're concerned about the process -- it would be good to include me, maybe?
>> I would like to inform you and just you, okay, just to let you know, this came to me because -- this came to me because we worked so hard on NGBs to come up with something that we felt was manageable. When I heard there were a lot of people out there, there were people out there that were thinking it was unmanageable because of something that was not our intent. I want to see if I can either vet out what their challenge is and maybe we can take a look at it or at least maybe work it it out.
>> Ed Rast: Basically what we have heard so far is we think it can be administratively worked out.
>> I'm not in favor this section should not go forward to the council, it's not worked out. I'm at the very least registering my objectiones to this, that they would be subject to a lot of rules for delivery service but they're not policy bodies. Anyway, that's my objection.
>> I've also heard from nonprofits that they're having trouble with this.
>> Sheila, I expect that you'll be hearing from many of the arts groups on that as well.
>> I already am. I also and I didn't want to say this directorially and I'm sorry, I don't think they're getting the right picture and who's painting the picture for them and I'm not going to point fingers. They're not painting the intent of the tasks, I don't think we did. I think that my entire goal in talking with them, and I'd be more than happy to bring Lisa, only very brief conversation, is they're understanding it differently than we intended it. That means that our language may not -- that means that we need to -- I'm not saying the language we adopted is wrong but we may need to send an intense statement long with the language.
>> I don't remember us having that discussion at all about the task force meeting.
>> Margie, I believe you and I both missed it which is why we last.
>> Ed Rast: We're going to correct the business days to calendar, 3 to 4?
>> Lisa Herrick: Lisa Herrick, it sounds like there's definitely going to be some changes to the staff report because there have been some decisions tonight and it sounds like there has to be more discussion of nongovernmental bodies.
>> I flag it that we make -- flag it that this is what's being adopted. I don't have a problem with that, I'm just not looking to reinvent the wheel here. But I do want to find -- we spent a lot of time on public meetings for a lot of reasons. We even spent an inordinate amount on NGBs. I think we did some great work. I don't want the work to get -- if we didn't do it enough oto where it isn't confusing, I'm willing to say we made have to amend or change slightly to make the not confusing. But I really don'tth that our intent is wrong.
>> Ed Rast: Nancy.
>> We talkabout this for about five meetings, there was a great discussion, and I think you know, we finally wore out. So I would disagree with you that there was a electronic intestine sent out by this tasks. I think we need real-life examples. I think what the City Manager's office did, in that format to the arts group, at a is a good item.
>> I disagree with the City Manager's real life examples. I think they're way too broad and it is one of a laundry list of maybe possible, this person might get it. My suspicion is and here's my point. I think it's too broad. I think it's broader than the intent of the task force. If I'm wrongdoer, then our language wrong. If that list, that laundry list is really the list, then our language is wrong.
>> Ed Rast: We're getting into a report versus a discussion which is off the agenda. Did we notice this particular one? So we're opening back up a topic -- but the -- it's the report versus going back, it's an update of where we are going to go forward with it versus a discussion of the actual topic itself.
>> Margie Matthews: If I'll just say, I want it noted on the status report that the staffers are not in agreement. We'll let the council hash it out. The staff report on my reading there was no room for different opinions. Just note that I'll be 99.

>> Ken Podgorsek: May I make a suggestion? That language was adopted by a major vote of the members that were attending that day and we had a quorum. There is another item on there where there is a minority appointment, there was members of the tasks that don't like, to this document, I agree with you, I think that's totally appropriate and let the council vet it out.
>> I'm asking that that report, I don't need you to write another report.
>> Tom Manheim: Tom Manheim I'm feeling little bit of concern in this discussion. We're talking about bringing something to council without it being in the format we want and the negotiations are here and will staff whether staffer incorrectly wrote the intent of the tasks.
>> Ken Podgorsek: That's not what I'm talking about.
>> What I'm hearing is Mr. Podgorsek is still having conversations. You would -- approximate.
>> Ken Podgorsek: You're right, let me restate. I believe we wrote good language, I believe that our intent is clear. I believe that I am trying to -- I'm doing outreach rather than anything else and trying to clarify that intent. So that it is clear, I don't necessarily believe -- I believe that for some reason, there are people that believe the sky is falling. I don't believe the sky is falling on this and I don't think it's anything, and I think a lot of it is misinformation. I think if somebody's going to oppose this or not like this I'd like them to at least have the correct information so that they can oppose it correctly. And that is my intent.
>> Tom Manheim: Tom Manheim, use to finish the thought. If you are finding yourself having to describe yourself differently than is on the paper, that concerns me greatly. The staff is doing its best effort to implement what's there, not away the staff is.
>> Ken Podgorsek: I think staff is misrepresenting the matter.
>> Ed Rast: We had a quorum, the motion passed, it's been written down, we reviewed it previously, it was agreed that was the way that the task force had a policy on, or policy position on that. We've had two of the task force members agree that that was not their opinion. He they have an opportunity to, I think what needs to be done is one or more of the task force members need to sit down with city staff and clarify if there's a question so that it's being attributed from city staff out to the nongovernment community, so that the intent of what that was written down is communicated. Least ah Herrick.
>> Lisa Herrick: I know that this group worked very hard on public meetings and you came up with something and there was agreement, at least there was some majority vote. But if people are concerned about the recommendations and how it's going to affect them, don't you want to hear that from them? Do you want to give them an opportunity to talk about this?
>> Ed Rast: That's not the question. The issue is we're going to, we have a meeting, the last meeting of the month, and we should be getting to the agenda items. We have a meeting, a third meeting of the month, we had talk to staff about scheduling public comment on this particular item, if it cannot be covered by then so then we can cover it. We have work done on the other issues, we wanted to get through that first and have that at that time, was it the April 26th meeting. If it hadn't been resolved at that point in time, we can have public comment on that issue.
>> Lisa Herrick: You're talking about it being resolved. I'm not sure that there should be a couple diplomats from the task force brokering a deal between some group that are going to be suggested by this ordinance. That's my question. I think we are on the work plan, part of the upcoming agenda and work plan, I think you need to agendas it and work open it again.
>> Ed Rast: Let's start down the agenda items. Next meeting is April 19th. What we need to do before the 19th is get a list of the organizations or the subsidies that have been $1 million for the subsidy side of it, tax subsidies that are going to be over the 200 so we get an idea where we are. So when we have the discussion on the economic he issues, we've got to see what is going to be affected.
>> Are you talking about the cost-before?
>> Lisa Herrick: Then I wrote down grants over $200,000.

>> Part of the cost benefit is on the 19th.
>> We've referred to this as the public subsidy issue.
>> Ed Rast: We have a lest of those because there's been some-my understanding in talking to city staff is nobody has an idea of how many of those there are that go out.
>> We certainly can get it for you.
>> Ed Rast: We don't know the extent of it when we're talking about economic stuff. There needs to be a committee put together to go ahead and talk about the economic development, based on the meeting last Tuesday there was discussion about what the tool actually was. We don't have an understanding of what that was, I'm uncomfortable about it the way it is.
>> It will be released next week, a response to Bob Brownstein's proposal. It is a city and agency situation.
>> Ed Rast: I had a talk with John Weis to discuss what the model was.
>> That's true, but I don't think we can turn around that information by your next week.
>> Tom Manheim: I don't know that that's going to be a major problem for you. I don't think that's going to slow you down in vitalling it.
>> I don't think you can adjourn without a quorum.
>> Ken Podgorsek: My understanding -- you can't convene a meeting.
>> Ed Rast: So we have to adjourn.
>> We never made a decision about the 26th.
>> Ed Rast: We have no quorum.
>> All right.
>> Ken Podgorsek: The only thing you can do when you don't have a quorum is adjourn.
>> Ed Rast: We're adjourned until the 19th.