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Sunshine Reform Task Force.

>> Ed Rast: Meeting is called to order. First agenda item is comments from the chair. I want to thank everybody who has been involved with the task force. The task force -- you can't? Oh. Is that better? All right. Comments from the chair. I want to thank everybody who's been involved with the task force. There's been literally, my calculation, a thousand or more hours put into this and if you count staff time probably a couple thousand hours. Especially the task force members, they're volunteers, the number of hours they've put in in the almost exactly two years, the task force itself, the committee meetings and a lot of reading. Lisa from the city attorney's office has been just invaluable in trying to draft or help us draft it. Tom from the City Manager's office, Lee Price who I don't see tonight. And she'll --

>> Tom Manheim: She'll be here shortly.

>> Ed Rast: I'm blanking out on people. Tom Norris, thank you Tom. Eileen. And yes. Eva, thank you very much. Ann, you know, we've had a lot of department heads, over the -- shown off a lot of other people have shown up over a long period of time. So I think the collaboration that we've tried to and partnership, I think we've met in most regards, and I think we've come up with a great document. And again, thank you everybody. And we'll move on to city staff comments. Eva, or Tom.

>> Tom Manheim: I had a couple of comments. Thank you, Mr. Chair, Tom Manheim. Tonight does mark rather a significant milestone, congratulations to everybody. Both for the city and for the task force, obviously. I just want to make a couple of comments by way of thanking you, as well, and to note that the work you've done here has already increased and will continue to increase transparency as we go forward in significant ways. Residents, people who do business with the city, people who just want to track issues, we've made it easier for them to know what their city government is doing. We'll be better as an organization and as a city by doing that. So I thank you. We have disagreed from time to time on some of the particulars of how we should go about doing this, but we have always shared the overall goals and respected your role, and I hope that has come through in our actions. I want to thank Ed, you, as chair, for all of your long hours and the hard work that you have put in as chair of the task force. And I want to thank all of the task force members for the way you've conducted yourself, the respect you've given to the city staff, and the way you've supported this effort. Finally, I also want to acknowledge the staff folks that are here. Eileen, Lisa, Eva, Tom Norris, Lee Price who will be here shortly, as I understand. I'm not done. Dottie, Gavin, and Sheila tucker and Dan Mcfadden who were here in spirit. A quick comment about the meeting. We expect that this will be the last task force meeting. However, just in case either the Rules Committee or the City Council, you know, says well, we want the task force to look at this while they're going through the phase II things, we do think you should continue as a council-established body up until the phase II recommendations have been adopted. We don't expect that that will necessarily lead to meetings but we would ask that you continue to conduct yourself as a body in terms of as you're meeting, keep in mind the limitations on not more than -- or less than a quorum, in terms of conversations you're having about that. And if you ever have questions or need advice, Lisa and I will always be here to try to answer the questions. With that, I'll turn it back over to you, chair.

>> Ed Rast: Thanks. Virginia.

>> Virginia Holtz: Virginia Holtz. As a task force member, it would be very helpful if you could e-mail the task force members whenever anything on this open government ordinance comes forth to the Rules Committee. So Rules Committee dates and times, and the council meetings dates and times.

>> Tom Manheim: We'd be happy to do that. And we actually have a schedule for Rules already. We will start going to Rules, and we'll be going every week, until we complete this on August 13th, thank you. We do have two special meetings scheduled of the Rules Committee. One is on the Friday before Labor Day, August 29th. And that will be a meeting where we will discuss administration and accountability in a large three-hour session. And then the second meeting, study session scheduled for the Tuesday after the veterans -- Columbus Day holiday, October 14th. Lisa has these all memorized. October 14th. And on October 14th we will be going over police records. But we will try to keep you apprised of that, we don't have anything scheduled with council yet, we assume that will come sometime before the end of the calendar year.

>> Virginia Holtz: Thank you.

>> Ed Rast: Okay. We've got the approval of draft minutes for April 3rd and March 20. Do we have a motion? Let's do April 3rd first and then we'll do March 20th. Do you have any changes? We have a second? All in favor, opposed?

>> Ken Podgorsek: I abstain because I was absent.

>> Ed Rast: All right. And then the March 20th minutes.

>> Move approval.

>> Second.

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

>> Ed Rast: Opposed? Abstentions? Next agenda item is City of San José community survey data. Tom Manheim.

>> Tom Manheim: Thank you. Just a quick note. We, every two years, do a community survey. The last survey was in November of last year, 2007. And we took the opportunity to add a question about transparency and accountability and perceptions about that within the community. Tom -- we don't have a slide. Oh, I thought we had a slide. But if you look in your agenda, I did want to share the results of the answers to that one question to you. The question was, overall, how confident are you that San José city government operates in a way, and as I look at that that's an awful typo but in a way that is open and accountable to the public? And you'll see that combining those that are extremely confident and those that are very confident, the number's only 35%. About 46% are somewhat confident, and then about 14% who are not at all confident. Are not too confident or not at all confident. I just wanted to share that with you. This is one of the measures that we will be looking at going forward, as your work is implemented, to see how the effects of having the sunshine ordinance and increased transparency changes perceptions about openness and accountability in city government.

So that is one of the ways we will be tracking the results of this effort. We just wanted to share that with you.

>> Ed Rast: Is this the first time that question has been asked on this one?

>> Tom Manheim: Yes, we added that to the survey this year, because it had been such an issue over the intervening two years, we thought it was appropriate to start measuring that.

>> Ed Rast: Comments from the task force?

>> I'm actually very surprised at those top two. I think that was an extraordinarily high figure. I wouldn't expect it to be that high. That was hard to beat.

>> Tom Manheim: I had a different reaction. I was disappointed it wasn't higher.

>> Really?

>> Tom Manheim: Interestingly, when we talked to the consultant who does the survey, his reaction was, the most significant figure is the number of people who are only somewhat confident, in that middle range, that 46%. And those are the people who really, you know, are sort of waiting to see, is the way he would describe it, you know, that have questions, aren't certain and arguably are the people who could be influenced by the effects of the ordinance and by the effects of our being more transparent. So we'd like to see that rise. We think of it as a good baseline to start from.

>> Ed Rast: All right. No additional comments? Comment from the public? Okay, next, fees for programming.

>> Tom Manheim: I also wanted to introduce this briefly. You'll recall -- pardon me -- you'll recall that when we were here last time, going over the phase 2 recommendations, I did mention to the task force that we had not filled in this one figure, the public records subcommittee had never addressed what the fee for -- should be -- the hourly fee should be when you are producing information that normally would only be produced otherwise -- at other scheduled intervals or information where it requires the staff to go out and actually do programming to extract the data. And that's in the public records act, just a very limited area where we are allowed to charge for this. The hope from the task force was, we could come up with a single number that would represent what it ought to be. And that was what I said to you, when we met last time, I expected to come back with a single number. I was wrong. We asked Tom Norris to look into it, and what he found is that it -- well, I'll let him explain it. But it -- given that we have a city policy of being cost recovery on these kinds of things, and given the range of different things that might happen, it's very difficult to come up with any single figure for this. So I'll pass it on to Tom and let him explain further.

>> Thanks. Actually, I was pretty glad to get this assignment when Tom gave it to me. Because I think it's important that we administer our responses to public records act requests, in the most consistent way that we can. And the most effective way that we can. And this struck me, coming up with the standardized fee, as being just that. So what I did was, I gathered information about some cases that we had had in the past, what they had cost, what it had taken to do them. And let me point out first, with one exception, and that's in the area of geographic information systems, and over the past year or so we've only had two such situations, where we have had to come up with programming costs. That's because we typically don't get that many of those kinds of requests. Well, what I found is that responding to these requests can

vary, what's required can vary widely. And it's based upon the nature of the request, the type of system that's involved, and the rigidity, versus the openness of that system. By rigidity, I mean that older systems, in particular, were designed to do one thing that's hard to get data out of them any other way, they have canned reports, it's difficult to do queries against them. Taking that into account, I then looked at three of the requests that we had had in the past. One took one employee, this was in the G.I.S. area, and because they get quite a few of these requests, they have one guy who knows how to do this, the same guy at the same hourly rate. Another request, this was information from the City's financial system, regarding employee salaries from past years ago. It took four employees, four different classifications, four hours each. The charge came up to about \$1700. And the other, the third one was even more complex and it was a request to identify and extract certain information from the city e-mail system, if there was an estimate made of the costs and if the requestor would have gone through with it, it would have requested three information technology employees, representing three classification and wage rates, working eight, 35 hours, depending on what they were doing at a total cost of about \$3600. My conclusion on this is there is really no way that we can come up with a fair and equitable standardized hourly rate for this sort of work because of the difference from job to job. And that in itself, if we tried to implement such a rate, we would be in effect undercharging some customers and we would be overcharging others. And we overcharging requestors would be against the spirit of the public records act. So I concluded that it isn't feasible, and since we don't have that many, it is not worth the -- I'm not going to say the trouble, but it doesn't seem to be worth the benefit derived from that. Staff is recommending that we leave the system the way it is, that we attempt to job by job, figure out what the cost of the program would be, and that would be the charges for extracting the data.

>> Tom Manheim: Thank you, Tom.

>> Ed Rast: Any comments from the task force? Joan.

>> Joan Rivas-Cosby: I had a question, Joan Rivas-Cosby. Do the requestors make a decision whether or not to pursue?

>> Yes, we do that too, regarding duplication of documents.

>> Tom Manheim: Mr. Chair, to make sure we have concurrence, we do have proposed revisions to the language. It's a very simple revision to the paragraph in question. If the task force was willing to waive the noticing requirement, we did not distribute this. It simply eliminates, this is the paragraph out of the phase 2 report. Where this -- that this would apply to. It simply eliminates where we were going to say a fee of X per hour, replaces it with the actual hourly cost incurred by city staff. They, it's page 16 of the phase II report.

>> Ed Rast: Comments, of the task force, one, waive the notification issue, which we vote on as a motion, second is approval of this if that passes. Am I not correct?

>> Tom Manheim: I would ask that you waive the notification because we've effectively already shown this. I apologize.

>> Ed Rast: Do we have a motion?

>> I move that we waive notice requirements on this.

>> Ed Rast: Do we have a second?

>> Second.

>> Ed Rast: Who seconded it? Bob?

>> Bob Brownstein: I did.

>> Ed Rast: Discussion, Ed Davis.

>> Ed Davis: I just wanted to say that this is a new proposal. It's different from what we had recommended considerably. You know, I think there are alternatives that we could consider beyond just saying that whatever the city, whatever actual costs are incurred, those are the costs. I have a couple of ideas, off the top of my head. But one of the reasons one gives notice is so we can think of these things. And I suggest to you that I'm not sure we have enough time to think about what is a fairly substantial change to what the task force did earlier.

>> Ed Rast: Virginia.

>> Virginia Holtz: I'd like to direct a question to Tom Norris, if I may. The question is, since you've heard through -- first of all that there weren't very many requests come forward. And that there was a difference in the type of requests that they were. And since you're new here, maybe you weren't the one to answer the question. But my question is: Over time, does it seem like the requests could be lumped into categories, so that there could be a sliding scale? Is that a possibility?

>> Tom Manheim: By their nature, these requests tend to be unique. If they were, I mean, for instance, I can -- let me give you an example of the Mercury News request for payroll information. The first time we did that, the cost to the city was over \$1,000. We did not charge the Mercury News. It was waived for them by an authority higher than me. Since that time, that information is easily retrievable, because it is now a report that can -- it happens to be in a newer software, peoplesoft which allows queries, so that once the query is established it's a much easier thing to produce. So it doesn't really require programming time.

>> Virginia Holtz: Will some of the --

>> Let me also add, I mentioned one of the areas that we do tend to get relatively more request is for geographic information systems, data. And because of that, and because it's one individual, who does that, we have actually set a standard cost for that. But it's because we -- it's over and over again. And so we're able to do that. Let me also mention that good news is, that nowadays, systems are increasingly, almost all of them are written with open architecture, which lends itself to querying, which would drastically reduce costs or maybe not even require charging. So I -- it's my opinion that whatever standardized rate we came up with, in a few years, will be moot.

>> Virginia Holtz: Well, then I also wondered if some of the ordinances that we are suggesting and/or council has already implemented will have affected that. Because much of this information is available now online. You know, I'm asking that question.

>> Well, much of our information -- information is increasingly available online. Where we can do it with any sort of cost effectiveness we choose to, then we can just direct people to our Website. Of course, greater customer service, as well. So for instance, in any of -- if you want information about a particular piece of property, about permits, about inspections, all of that sort of thing, and you call us, we can navigate you right to the Website and you can see the documents immediately. And so wherever that's possible, we're moving in that direction.

>> Tom Manheim: Mr. Chair. If I could just clarify one thing. I did want to note that the request for an exemption from the noticing was simply for this slide and this language. This item has actually been noticed, in two different ways. There is a full memo describing staff's position, and the concern about trying to do this, that was in the packet and distributed, as well as the language in the staff report that goes to the Rules Committee which we will, in the next report, next item we'll be dealing with, also has this exact proposal in it. The only thing new here is the specific language. And we did that only because we have been -- some of the task force members have requested to see things in writing, not just understand the concepts being proposed. And so we wanted to make sure we had the very specific language that we were recommending that reflects the -- both the two different items that had been appropriately noticed.

>> Ed Rast: So the change is a fee of "dollar, blank, per hour," crossed out, and the underlined is what's been added?

>> Tom Manheim: That is how we would propose to implement the item that's before you which was noticed before.

>> Ed Rast: Prior to that change it read a fee of dollar-per-hour will be charged. The line-out and the underline is what's changed?

>> Tom Manheim: The line-out is what's struck, the underline is what was added in its place.

>> Ed Rast: Ken Podgorsek.

>> Ken Podgorsek: Mr. Chair, we have to actually vote on waiving the notice before voting on it.

>> Bob Brownstein: That's what I thought I seconded.

>> Ed Rast: Let's vote on waiving the notice. All in favor? [ayes]

>> Ed Rast: Opposed? Abstentions, now we have to have a motion to discuss it. Dave.

>> Dave Zenker: Dave Zenker. I guess throughout our struggles, we have been careful to develop language that will live on through the document, and not have to change as the ordinance matures and evolves. I like the change of creating something that ultimately isn't going to become obsolete in a year or six months or five years. And I also understand how different city jobs are going to cost different things. And understand that we need to be very careful about being fair to the consumer, not overcharging somebody for one thing, and undercharging somebody for another. So I support the City's position on this, and would make a motion that we accept the language change.

>> Second.

>> Ed Rast: Discussion? Tom -- or Bob Brownstein.

>> Bob Brownstein: Can I get a better sense of what appeal process, if any, exists if someone feels that the public information would be served by information being made available but they lack the financial capability of meeting these fees?

>> Tom Manheim: I can tell you how the one item I mentioned happened. The managing editor called the City Manager and complained.

>> Bob Brownstein: I see. Well, I think we can do better than that.

>> Tom Manheim: I'm sorry. I'm reminded that the Rules Committee would be the appropriate way to do that. They do consider -- they do have a standing item on public records now.

>> Ed Rast: Rules and Open Government.

>> Bob Brownstein: But that process wasn't used in the case you just mentioned, am I correct?

>> Tom Manheim: That's correct. And frankly, prior to the formation of this task force, I would argue that this -- this rule has been not applied consistently. There are times when we do charge, times when we don't. It depends on the department -- that's one thing we talked to public records that they identified as a concern. So we did have discussions prior to -- within our office about being more consistent -- the desire was to wait and see what came out of the task force and let this become the thing that really drives consistency throughout the organizations.

>> Bob Brownstein: Then I would like to offer an amendment to this language that would state that any individual may appeal the imposition of these fees to the Rules Committee, if they wish to argue that the public interest in making the information available would be jeopardized if that charge had to be imposed.

>> Tom Manheim: I don't suppose you have that written down? I was scribbling as fast as I could.

>> Bob Brownstein: No, I rely on our faithful scribes to my left.

>> Ed Rast: Do you want them, Tom or Lee, do you want Bob to repeat it?

>> Bob Brownstein: Want me to try to repeat it again? I have never written it. It's straight off my head. Let's see. An individual may appeal the imposition of these fees to the Rules Committee, if they wish to argue that the public interest would be served by waiving the fee and making the information available. Waiving the fee or part of the fee.

>> Virginia Holtz: I think you said better served.

>> Bob Brownstein: Better served, fine.

>> Ed Rast: So do you have it down? Lee? Okay. So is the maker of the motion accepting the amendment?

>> Dave Zenker: Yeah, my only question would be, would it be better to do that at Rules or the open government commission? It seems to me it would be better to do that at the open government commission. Although they potentially would meet monthly, every other month. Rules meets weekly.

>> Ed Rast: That's the issue.

>> Ken Podgorsek: Ken Podgorsek. I think Rules is better because the open government commission is inherently a advisory body, not a policy body. Rules can make a decision to direct and waive.

>> Dave Zenker: So I'm fine accepting the amendment for now but I think there needs to be some thought down the road given where this needs to sit.

>> Ed Rast: Ed Davis.

>> Ed Davis: I just had a question of Tom. Tom, if somebody makes the request, and they get a response back, it's going to cost \$1,000. That's your actual per-hour cost. And the requestor then says, can you give me a breakdown on how that cost works out, how you get to \$1,000, what would the city do in response to that request for a breakdown?

>> Tom Manheim: What we've done in the past is I've just asked the department, tell me how you computed that, and they'll give me disposition level at this hourly rate, this many hours.

>> Ed Davis: One thing the task force might consider is, adding language here that would require the city to give that breakdown. Because let's put the City of San José aside but my experience with other cities has been that they take their own view of what is an actual cost -- actual cost incurred. And you have no idea whether it's accurate or not because the city won't give you the detail necessary to make a determination of whether it's an actual cost or not. So having a requirement that the city provide the information that Tom said they usually provide with, you know, with Thomas not around or whatever, make sure the city give that information.

>> Dave Zenker: So could that be stated in some kind of language that says, "and shall provide an invoice with the detailed cost breakdown"?

>> Tom Manheim: We'll provide an estimate.

>> Ed Rast: Tom Manheim and then Dan.

>> Tom Manheim: I'd like to suggest for clarity purposes we say -- doesn't get into the actual direct hourly cost.

>> Ken Podgorsek: That never happens here.

>> Tom Manheim: That doesn't happen here, that's fine with us.

>> Ed Rast: So let's see. Dave, did you want to -- so you're making an amendment to your motion?

>> Tom Manheim: I just wanted to request, could we make that upon request, so that we don't have to routinely do it, but if somebody asks for it we're certainly welcome to provide it.

>> Ken Podgorsek: Why can't we provide it?

>> The problem with that is the person requesting that information may not know that information is available. If you want them to make the request, you need to -- there should be a requirement that it be disclosed to them that upon request, we will give you an estimate. I don't know how many people here make information requests, but I do it from time to time. And sometimes, I just get hit with a bill. They don't even tell me. I put in the request and then I get a call that says okay, come on over, and it's \$50. I'm what, 50 bucks? I thought it was just going to be a couple of things. And then when I pick up the packet I have to pay for the packet and when I get the packet I look in it and I see the same memo has been copied five times from different sources. And you know, some of them have notes scribbled on the side and stuff. And they don't even give the option of saying, oh, here, we've got five different copies. Do you want them all?

>> I'd just like to mention two things. One is that we have been just recently conducting training of our staff. And one of the things we're stressing is before they do any photocopying that they give an estimate to the individual. Second thing is: Any person who asks for the photocopies that show up, they don't have to accept any photocopies they don't want.

>> Dan Pulcrano: Then that needs to be known, too. Because the way I get it is, you know, here's your bill. They don't say, "oh, were these the documents you wanted? And if you want to reject them, you can."

>> Ed Rast: All right. We have public comment. [Off microphone]

>> Ed Rast: Raise the microphone. It's on top.

>> I represent a client who made a public records request for e-mail from the City of San José. The City of San José has taken the position that obtaining those e-mails requires programming and data compilation. The cost of producing those e-mails are close to \$4,000. The cost is close to saying no, you can't have them. The vast majority of the public can't afford to pay those kind of cost just to obtain records. My request, my recommendation would be to strike the portion of this that begins with the number 1. If they actually have to do programming, in order to obtain information, I can understand that that's an unusual request. But simply using existing software in order to do electronic searches and identify records and produce them strikes me as being somewhat less burdensome than the ordinary cost of looking through paper files and pulling out documents, for which they're not allowed to charge. So that would be my request, thank you.

>> Dan Pulcrano: I would like to say that I agree wholeheartedly with Mr. Chadwick's comments. You know, any activity that can be normally performed through any simple search should not be charged.

>> I don't think we're talking about a simple search. That's the different.

>> Tom Manheim: Would you explain what was involved in that search, Tom?

>> Well, a big part of it is maybe the e-mails are not as accessible as you may think. They have been moved to PST folders, that are not directly accessible, unless they go to the computer where they're stored. There is a matter of as you mentioned duplications, so you get one person forwards an e-mail to another person, another person replies, and it -- we turn out about 3 million e-mails a year, I think, something like that. It's -- we have more data on our e-mail system in a year than the library of Congress has. That's maybe another way to put it. But that requires that people have to identify which of the duplicates and which are not. And it's not just also you typically search by key word. And the key word gets tons of false hits. So are you pulling up documents that are really have nothing to do with the request? So it's not really just a simple query. It's -- there's a lot more to it.

>> Ed Rast: Ed Davis.

>> Ed Davis: That raises another point that goes to my original point that it's having this discussion now is kind of problematic. But from what I just heard described, is the same argument that you always get back in the old days, when the documents were in files somewhere. And the city wanted to charge you for going through the files, physically, to find the documents. And the public records act was specifically amended to make it clear that the cost of going through those files to find the documents is not a

recoverable cost. And I don't see any difference between searching a computer for e-mails and searching a file cabinet for the same kind of information that's contained in the file cabinet. In other words, I think there could be a compelling argument that this provision of what they're going to do is charge for searching for e-mails, where you don't have to write a program, may violate the public records act.

>> Tom Manheim: I believe if I could, required the restoration of backup tapes and searching through the backup tapes for essentially every e-mail, every computer on the city's system, which is, I'm going to take a guess here, probably about 4,000 or so computers. So that's what was involved in this.

>> Ed Davis: Well, I don't know the details of that one specific request. And if you got to go through and look at backup tapes, that may be a different kind of a circumstance. But what I'm talking about is this language in the standard situation where all you do is a basic search for existing e-mails, as opposed to perhaps going and searching backup tapes and that type of thing. That that could be used to charge for the kind of work that is not a direct cost of duplication. Because that's what we're talking about here, is direct cost of duplication. And programming and that type of thing, I agree, the public records act recognizes that a city is entitled to recover its actual cost of doing a program that doesn't already exist. But I think there are issues here that are a little bit murky at least with respect to whether this is an appropriate -- and I'm not sure frankly now that I read it in more detail, I'm not sure I understand what number 1 is.

>> Tom Manheim: May I -- I'm sorry, I have to interrupt here. I apologize. But we are now, I think, getting far afield from what is a agendaized. There is one issue agendaized. All of this was vetted, this language was vetted by the public records committee, vetted by this task force, and accepted previously. This is the direction you gave us. The only question that we were trying to raise, and if the task force would prefer to plug in an hourly rate, that's certainly an option that you could do, if you want -- if you don't want to accept the actual hourly cost incurred, or the actual -- direct hourly cost incurred and wish to put in a particular dollar figure. That's completely acceptable. We understand you may want to do that. We were just giving you our best recommendation. [Off microphone] the --

>> Ed Rast: Okay, Tom, answer then Bob.

>> Bob Brownstein: Want to answer his question?

>> Lisa Herrick: The entire phase II report is on tonight for your review and approval. However, every provision, you have given full direction to staff to fill in the blanks which we've tried to do as best as we can, so --

>> Tom Manheim: If I could just add, the goal for tonight was the entire phase II report is to make sure we have accurately captured the direction you have previously provided. We did not expect that we would get into redebating the things that people, various people around the table may not have liked when it was first approved by the task force.

>> Ed Davis: This is a substantive change, with all due respect --

>> Ed Rast: Ed Davis.

>> Ed Davis: This is a substantive change. For the city to request that we waive the requirement of notice and then say we can't -- you can't discuss what we waived the notice period for, strikes me as rather odd.

>> Tom Manheim: I'm sorry, I need to respond. This has been completely noticed. The recommendation from staff has been completely noticed. The only thing that has not been noticed is that specific language up there addressing how you might want to deal with the fee issue. And if you would prefer not to accept the staff's language, that's perfectly acceptable. But the proposal that we continue with the way things have been, which is what this language does, it simply says the actual hourly cost incurred by city staff, that's exactly the way we do it now. That was simply language that you could look at that made clear what the staff recommendation was. But the recommendation has been well noticed in two places on this agenda.

>> Ed Rast: Bob Brownstein and Ken Podgorsek.

>> Bob Brownstein: From my own perspective, although our general philosophy is not to redebate issues we've already taken a look at, here at the last meeting if somebody really wanted to, I certainly would not object to them doing it, on process. On the merits, I can live with this language. We've added it -- I mean, the language talks about reports that are not regularly scheduled, the substantial burden language, we've amended it to include giving people advance notice of what it's going to cost them. We've amended it to provide an Applet process. If this is being used in a way that is unreasonable, we have recommended oversight provisions for this open government initiative to deal with that. And you

know, I could -- I think we are -- this is not so far afield that I would want to have it brought back and essentially not have a proposal go forward.

>> Ed Rast: Ken Podgorsek.

>> Ken Podgorsek: Mr. Chair, I'd like to vote on the motion and either put it up or down, and then we can move on from there.

>> Ed Rast: All right. So let's read the -- can we read the amended motion?

>> I have a real quick question. Tom, you said this was provided, this was noticed in advance. We provided this language in advance?

>> Tom Manheim: No, that specific language -- the fees, the changes in the language was not noticed. But there was the staff report for this item raised the issue that we're talking about, and then the staff report that will go to Rules very clearly says at the very end of this where this item is addressed that we recommend staying with the existing practice.

>> Thank you for clarifying.

>> Ed Rast: We've got a motion on the table. Question's been called. Any objection?

>> Dan Pulcrano: Could the motion be read back?

>> The Clerk: Motion actually was simply made by Mr. Zenker and seconded by Ms. Johnson to accept the staff-recommended language as it is before you, fees for duplication, item C.

>> Ed Rast: We had two friendly amendment.

>> The Clerk: Sorry about that. Friendly amendment that Bob read twice that an individual may appeal to the Rules and Open Government committee if they wished to argue the public's interest would be better served by waiving the fee or part of the fee.

>> Tom Manheim: I think if I could fill in a couple of things. An individual may appeal the imposition of fees to the Rules and Open Government Committee, if they wish to argue that the public interest would be better served by making the information available to -- pardon me -- making information available and waiving the fees.

>> Ed Rast: And the second amendment? And then we had a second amendment.

>> Bob Brownstein: Second friendly amendment.

>> And that was --

>> Lisa Herrick: That the city will provide an estimate of the actual direct hourly rate of the person programming and the amount of time it will take that person to produce the information.

>> Dan Pulcrano: We also added the word "direct" to hourly cost.

>> Lisa Herrick: I just said "direct."

>> Tom Manheim: Upon request. Is it not upon request? That that got rejected?

>> Ed Rast: Everyone understands the motion as stated.

>> Tom Manheim: The city will provide it.

>> Dan Pulcrano: And then Mr. Chadwick your suggestion was to strike item 1, and that was because -- could you speak to that for a second?

>> James Chadwick: Yes, I recommend that number 1 be stricken because that language is very similar to language in government code 6253.9, relied upon by the city and other agencies to justify imposing fees for producing electronic records in fairly routine circumstances, simply because they don't produce those records as part of any regular report. That actually encompasses that clause 1 encompasses the vast majority of public records act requests as I think Mr. Manheim acknowledged.

>> Dan Pulcrano: Okay, so basically as I understand it, if it's a report that can be pulled and requested, but you're requesting it mid-cycle, you're arguing that it doesn't create an undue burden because that's already written.

>> James Chadwick: I'm also suggesting that it doesn't create an undue burden to produce documents, electronic records that are not part of any regular report.

>> Dan Pulcrano: Okay, thank you. So you know, can I ask staff, with this, you know, gut the recommendation if simply we went from request for public information that requires the city to write programming language? What would be wrong with that?

>> Well, I think Mr. Chadwick is leaving out one phrase there, and that is without a substantial burden. That doesn't mean you can easily pull it out. You've got to justify that to bring out this otherwise, other than regularly scheduled. It's also got the requirement that it produces a substantial burden on the city.

>> Dan Pulcrano: The problem I have is that substantial is subjective. There is no objective criteria for what is a substantial burden or not.

>> That's exactly what you would be asking the Rules Committee to assess.

>> Ed Rast: Dave.

>> Dave Zenker: I was just going to say I appreciate the amendments and up to this point I feel comfortable with them but this one I don't, because I don't have a history of how this all came together, how the work came together at public records. If somebody else wants to make a motion about that, that's great. But I don't feel comfortable about this one. I don't know about 6254.9 and I don't know how public records came to get this language and I don't feel comfortable adding this as an amendment at this point.

>> Ed Rast: Let me make a comment. We've spent now, what is it, 30 minutes on this one. 30 minutes on it. We have a motion on the table and I would suggest that we vote on it and then if we want to go further on it -- that's where we're headed. All right, so we have a motion on the table. All in favor? [ayes]

>> Ed Rast: Opposed? Abstentions? Motion passes. Additional comments? Dan. You want to insert one -- that motion passed.

>> Dan Pulcrano: It's passed. Let's move on.

>> Ed Rast: All right, fine. Thank you. Okay, Sunshine Reform Task Force.

>> Tom Manheim: Thank you, Mr. Chair. I just have some brief comments which I'm less confident of now but we think we captured everything that the task force recommended accurately as I said in my e-mail. So this is just an opportunity for you to -- hopefully you've reviewed it. We're not planning to do a presentation on it. You have had the report before you, and this would be an opportunity for you to either approve it or not approve it or let us know if there are areas where we have missed the mark.

>> Ed Rast: Ken Podgorsek.

>> Ken Podgorsek: I'm going to make a general comment. I want to compliment the staff. When we went through the phase I report, we went through a certain amount of time and we learned from that into phase II. I think staff reflected the work quite well. And I really was pleased to see this report. Thank you.

>> Ed Rast: Let me make a suggestion and see if the task force agrees with it. We can go -- basically we can take a look at it and go by group as we go through it. In other words, you can go through the -- the chair's letter, the index, table of contents, the introduction which is -- does anybody have any questions or anything on those first three items? And then the next -- so let's see if we can move through this item by item. Any additional comments about the chair's letter? Anything need to be added or subtracted? Okay. Table of contents. Introduction.

>> Tom Manheim: Mr. Chair.

>> Ed Rast: Yes.

>> Tom Manheim: We could go through this page by page or it may be helpful to know if there are any concerns that people want to raise, they could raise --

>> Ed Rast: Let's go section by section I think faster. All right, what we'll do is as we hit each section we'll ask the people who are on that to comment. All right, so we're -- introduction, any questions? None. And I'll let Ken Podgorsek to look at the purpose and intent statement.

>> Ken Podgorsek: I think that accurately reflects our work.

>> Ed Rast: Public records, Bob Brownstein.

>> Bob Brownstein: I think the public reports section accurately reflects what we said, that in the vast majority of cases, where I thought the language might be tinkered with to deal with an issue that was raised in the staff response, I've refrained from moving in that direction because I did not want to raise new issues. However, there is one case where I think an additional sentence could be added that would not be controversial and could reflect the intent of the task force, in light of one of the staff comments. On 5.1.2.060, page 11, we were discussing making the line item budget available electronically. Staff has argued that there are technical reasons why this would be prohibitively competitive or not. I would like to make that line item budget available some way, just in case it turns out there isn't a reasonable way to do it electronically. So I would like to add a sentence to 5.1.2.060 (a), and that sentence would say, if the line item budget cannot be made available in electronic form, then a minimum of one copy shall be made available in the office of the City Clerk, and one copy in each of the public libraries in the city.

>> Ed Rast: Do you have a second to that motion?

>> Second.

>> Ed Rast: All right. Comment?

>> Tom Manheim: Just so that we're sure we're capturing -- that's made available in the City Clerk's office and --

>> Bob Brownstein: One copy in each of the public libraries.

>> Tom Manheim: All the branches?

>> Bob Brownstein: The main library and the branch libraries.

>> Ed Rast: Task force comments? Do we have a motion?

>> Virginia Holtz: I appreciate that clarification. Thank you.

>> Ed Rast: We've got a motion and second? Second, all right, fine. Public comment? All in favor? [ayes]

>> Ed Rast: Opposed? Abstentions. So we have -- Lee or Tom, you've got the text. Additional task force comments on public records. Let's see, Virginia was on the public records. Dave, you were on public records, if I remember correctly.

>> Virginia Holtz: I'm the only one here from public records.

>> Ed Rast: Okay. Oh, I'm sorry. Dan was too.

>> Tom Manheim: Virginia and Dan were the two members that are here.

>> Ed Rast: Both of you are okay with the comments? Public records is a large area. Trixie.

>> Trixie Johnson: I still have an issue with quarterly reports to the police department. Unless and until they get the kind of computer equipment and staffing, that really makes that an easy thing to do, it is very time-consuming to do. And we have a very small staff. Now, most of this work is done or should be done, I would think, by non-sworn personnel. Which might help. But the sworn personnel have to be involved in that report ultimately I would think. And I do think quarterly is going to be a huge time pressure on the department. And so I just want to express that while I think it's a great idea, I think given their current resources, it's a lot to ask.

>> Ed Rast: Let me see if I can ask Captain Kirby a question. Captain Kirby, the city authorized a records management system, I understand. Would that assist in that particular regard?

>> The records management system is an update to our existing records management system. It prepares but does not include the electronic collection of data. It is a modification or an upgrade to move data once it's within a database, but it has the porthole to allow you to put electronic information in. It's the application the hardware, the software we don't have yet to do that automatic data collection because we're still in a paper society. So we have staff technicians taking the paper, entering it into a electronic system so we can then search it.

>> Ed Rast: Is that scheduled for future budget?

>> Well, it's scheduled for ongoing discussion, in fact we had a meeting today with the Rules Committee to discuss technology and issues that could be implemented to reduce staffing, for one thing. And we have made that quite clear that should there be money made available at the conclusion of an assessment period, that this would be one area that we would encourage the city to move forward on.

>> Ed Rast: Additional comments from the task force? Public comment? Or I'm sorry, Virginia.

>> Virginia Holtz: I was just going to make a general statement on the public records section. While there wasn't unanimity on the subcommittee, the subcommittee spoke, and the task force spoke, and I don't feel that while I wasn't on the prevailing side in a number of those issues, I feel that both entities have spoken, and I was overruled, so I'm not going to bring up those other issues.

>> Ed Rast: Okay.

>> Virginia Holtz: I think it's going to be vetted in the Rules Committee as well with council.

>> Ed Rast: On this particular item, does the task force want to vote on the acceptance of this particular or just move forward? I'm sorry, Mary Ann, you had a comment?

>> Mary Ann Ruiz: Thank you staff for that. Brenda apologized she could not be here this evening but she did have a request to revise the language, this is more of a language than a substantive request. And this is on page 14, 5.2 (e).

>> Tom Manheim: 5.2 which?

>> Mary Ann Ruiz: 5.2.1 (d). D as in dog. For simple routine requests, she's -- so we have D, it starts out for simple routine requests, she is requesting that the next phrase starting with "by and requestor is moved" to the end of the sentence. So we would read for simple responding to request must provide a response and request for information by the end of the next business day.

>> Ken Podgorsek: It reads better.

>> Much better.

>> Ed Rast: Everybody accept? That's fine. And staff is --

>> Mary Ann Ruiz: And a similar request for the next, in E, for extensive or demanding requests, to continue reading at the point of the city employee responsible for responding to the request must provide a response no later than three business days. Just switching.

>> Subject and verb.

>> Ed Rast: All right, so we have a motion. Want to make the motion?

>> Mary Ann Ruiz: I motion that task force accept the recommended changes.

>> Ed Rast: Second? We have a second by Joan. All right, fine. Discussion. Public comment? All in favor? [ayes]

>> Ed Rast: Opposed, abstentions? Staff, let's see, we keep -- all right. Is there any additional comments on -- by the task force, staff, or the public, on public records section? All right. With that we'll move to section 6, and I think Dan had a comment.

>> Dan Pulcrano: Yes, the comment I had was simply regarding the note that was inserted at the top. Which I'd like to reflect more precisely what was the actual case. These were recommendations. There was a decision made not to put this in an ordinance due to the changing nature of technology. So it wasn't simply as guidelines. These are recommendations, in fact. But -- so I'd like to amend this so that it reads, "due to the changing nature of technology," or "due to the ever changing nature of technology, the recommendations contained in the technology section are not part of a city ordinance." And just leave it at that. Does anybody have any objection to that?

>> Virginia Holtz: Or you might just say that these are recommendations.

>> Dan Pulcrano: Yes, the recommendations, I'll leave that --

>> Tom Manheim: Dan, coy just read it back the way I think it would read then?

>> Dan Pulcrano: Sure.

>> Tom Manheim: Due to the ever changing nature of technology the recommendations contained in the technology session, we have a little typo there, are not to be part of a city ordinance. Are not -- we don't have an ordinance yet, that's why we said to be.

>> Dan Pulcrano: Not intended to be part of a city ordinance.

>> Ed Rast: Do we have a motion on it?

>> Dan Pulcrano: That's a motion.

>> Ed Rast: Do we have a second?

>> Joan Rivas-Cosby: I'll second.

>> Ed Rast: Joan seconds. Public comment? All in favor? [ayes]

>> Ed Rast: Opposed? Abstentions, motion passes. Any additional comments on technology? Ethics and conduct which was Trixie.

>> Trixie Johnson: We went over this very carefully when it was adopted and it looks fine now. We had quite a good time with this one. This one almost belongs first because it sets the tone for everything else.

>> Ken Podgorsek: That's true.

>> Tom Manheim: Could I comment?

>> Ed Rast: Yes, Tom.

>> Tom Manheim: We thought the same thing. The numbering because it had been established later on, we couldn't figure out the way to move it.

>> Trixie Johnson: I know, but that seems a rather arbitrary barrier.

>> Tom Manheim: The task force agreed early on to take the structure of the San Francisco ordinance, and that's where they put it. Shows that they could have thought better.

>> Virginia Holtz: What does it take to move it to the front, just our acceptance to do this?

>> Dave Zenker: I make a motion that we move it to the fronts.

>> Virginia Holtz: I make the motion -- thank you.

>> Ed Rast: Who made the motion? Dueling motions? Okay, so discussion, public comment? All in favor? [ayes]

>> Ed Rast: Opposed, abstentions. Passes. Thank you, Trixie. Okay.

>> Trixie Johnson: Yes, it does, sets the pace for everything else.

>> Ed Rast: Bob and Ken. Accountability, administration. Any additional comments by task force, staff comments?

>> Tom Manheim: Sorry, I was just reflecting on one change you just made. It's easy for us to say that but I have to tell you poor Gavin who's going to have to renumber the table of contents --

>> Trixie Johnson: My apologies. But he can do it.

>> Ken Podgorsek: Could we get an itemized estimate? [Laughter]

>> Ed Rast: All right, so we're on accountability, administration accountability. All right.

>> Ken Podgorsek: That was a pretty massaged --

>> Ed Rast: That's the end.

>> Ken Podgorsek: Mr. Chair, I'd like to make a motion that we accept this report and move it forward to the Rules Committee and eventually the City Council.

>> Ed Rast: If I'm not correct, doesn't it go to the City Council which refers it back to the Rules Committee?

>> Tom Manheim: It actually is referral to the City Council. And it will be considered by Rules before it gets there. You are serving at the pleasure of the council.

>> Ken Podgorsek: Absolutely, thank you. If you could change my motion accordingly.

>> Ed Rast: All right, so we have a second?

>> Bob Brownstein: Second.

>> Ed Rast: Bob Brownstein seconds. Discussion. Mary Ann.

>> Mary Ann Ruiz: I'm happy to accept, move forward with the motion. However, I do have questions on the staff presentation on the preliminary comments. So I don't know if just that, if we should accept it after that discussion or do we accept it now?

>> Ed Rast: Well, it's up to the task force, what it wants. My motion is, we should accept it. Now we have something we have accepted and we can discuss the staff recommendations and go forward from there.

>> Mary Ann Ruiz: Okay. The report itself is fine. I may have some suggestions on the introduction or some statements to add to this report, based on the next discussion. So I don't know how we want to handle that.

>> Ed Rast: All right, Bob.

>> Bob Brownstein: Let me suggest that we approve the report. I think a number of us will have some ideas on how we should move forward in terms of making comments regarding the staff memo. And so you won't be alone in that. But I think all of those will be reflections on the basic document that at some point we have to get on the record.

>> Mary Ann Ruiz: Okay.

>> Ed Rast: Ken Podgorsek.

>> Ken Podgorsek: I'm going to concur with Bob. I think we can accept the report and if we have comments, we want to make comments on staff's recommendations we should send that forward as a memo, and -- but you have to have a base to start with.

>> Ed Rast: Additional comments from the task force? We have a motion? Staff comment? Public comment? All in favor in approving the Sunshine Reform Task Force phase II report and recommendations? [ayes]

>> Ed Rast: Opposed, abstentions. That passes. So next agenda item is staff presentation of a preliminary -- let's see, of a preliminary feedback -- of preliminary organizational feedback on Sunshine Reform Task Force phase II report and recommendations. Tom Manheim, I assume Tom Manheim.

>> Tom Manheim: Just a quick introduction and I'm going to turn this over to other members of the team. You will recall that we did this on phase 1, and I believe we told you we would also do it on phase 2, following the last meeting we convened a group of senior staff. We actually went to a senior staff meeting and walked them through the recommendations. And then we also convened a group of city staff to go over it in more detail. To make sure that we hadn't missed any concerns along the way. Thankfully the good news is that there was very little raised through that process that we had not already addressed here with the task force. So we're going to go through the report. I know this is the first time when we've distributed this, it is the first time you had seen it in writing. But it really reflects for the most part information that you have heard along the way. And this is the report that staff will be sending to accompany your recommendations. We recognize that you won't agree with it. We don't expect you to agree with all of the things in there. And we would expect you to, when these items come to the Rules Committee, to be there to comment and to make your concerns known. And with that I'll just pass its on. I say that I guess by way of introduction, so you recognize that we know that there are things in there that you disagree with. Because these are debates we've had, over the last few months. Oh, and I have the first slide. So -- and oh yes, Mary Ann.

>> Mary Ann Ruiz: A quick question. Can you clarify, was this -- were we informed that this would be presented to council in this way? I may have missed that meeting where this was -- where we were informed that this would be part of the process, that staff would have their own sunshine ordinance.

>> Tom Manheim: We talked to it along the way, I couldn't point to which meeting or where, we talked about it as exactly we did on phase I. I know we talked about that in here as well. I can't point to when.

>> Ed Rast: Let me make a comment. Mary Ann, or -- I think what's happened is they have pulled all their comments forward rather than taking some of the comments later at the Rules Committee. They

came back with a lot of things at the Rules Committee. So in some ways, even though there maybe some disagreement or the content of their comments, I think it's useful to the task force to see what their comments are, so we can as a group discuss and go forward from there. Dave.

>> Dave Zenker: Dave Zenker. Just for your information, Mary Ann, I had a small stroke about the first letter that came out about phase I recommendations. If you're having a small stroke about these, you're in the right realm. You weren't around for the process.

>> Mary Ann Ruiz: I did not understand this was part of the process. This was my own -- I did not understand this was part of the process.

>> Tom Manheim: The one thing we did differently intentionally really out of respect for the task force is, the first time we -- pardon me -- we issued our staff report when, at the same time, that we released the phase 1 report. I don't know that we brought it back to the task force to give you a chance to hear its. And we really felt that we owed that to you to let you look at it and hear about it directly rather than just discover it after the fact. So that is why we're here.

>> Ed Rast: You know, I think I understand some of the comments.

>> Tom Manheim: We just didn't do a presentation last time.

>> Ed Rast: The difference is the way they've done it this way, we have an opportunity to talk about it before it goes out. In other words, if they had done it the other way it would have gone to Rules and we wouldn't have had an opportunity to talk about the recommendations.

>> Mary Ann Ruiz: I can certainly appreciate that we have been provided this, as it will be accompanying our report. But I don't really feel like we're going to have much of a dialogue. So -- so I guess Ed, that's responding to what you just said, we have an opportunity to comment. I don't really think we're going to have a lot of opportunity to comment.

>> Ed Davis: Along those lines I have a question in terms of what we're planning on doing tonight. And I think the staff's comments or opposition to what we -- the task force has now adopted, first of all, every single substantive recommendation that we make, that the task force made in phase II staff is opposing. And I don't think that we can, you know, go over those and have a discussion this evening that's going to amount to very much. What I would suggest, and I would be more than willing, if the task force is, to do a written memo to submit to the Rules or to the council, whomever, in response to what the staff has done. I'd work with any subcommittee that -- or committee or the task force itself, whether we have another meeting or whatever, because I think that we need, in order to present our position, the task force position to the council, ultimately, that some response is required to staff's opposition, which is substantial, to what the recommendations are. So rather than have a back-and-forth this evening, that can take it well past 8:30, perhaps that would be the best way to do it in a manner that the task force thinks is appropriate. I just wants to make it clear, I'm willing to work with any group, either the task force at large or a subcommittee, to present, you know, the other side of the picture for the City Council, which I think is very important.

>> Ed Rast: Ken Podgorsek and then Bob.

>> Ken Podgorsek: I would have loved if we'd had the opportunity to have a Kumbaya moment here, and that we could have all been on the same page. But in reading the staff's comments on the section that I spent a lot of time with Ed and Bob on, administration and accountability, I wasn't surprised by any of their comments. They had expressed concern all the way through the entire process, they're very consistent in that. We looked at ways of reflecting that concern in the stuff that we wrote, and was approved by the task force. I would have liked it if we could have maybe been a little closer. But that's democracy. Democracy is that different people with different opinions come forward. And it goes to a vetting body, in this case it will eventually going to be the City Council. The City Council is going to have to vet our recommendations, staff's concerns, our comments based on staff's concerns and they're going to have to come up with a process. I believe the process has served us well through phase I. I think the process will serve us well through phase II. I can respectfully disagree with staff on some of their comments to work that we've done. But they have concerns, and they have a duty to express those concerns. And so I think we should prepare comments about those concerns to explain our positions in a narrative kind of style. But I'm not -- there was nothing in my section that surprised me.

>> Ed Rast: Bob and Virginia and Trixie.

>> Bob Brownstein: I'm very comfortable with the notion of a subgroup getting together and putting together written comments to the City Council in reaction to the or in response to the staff memo, rather than just relying on helter skelter, what manages to show up at a Rules Committee meeting which is, A, less effective and B, unfair to the handful of people who get stuck with doing that. I do feel that the scope,

and in some cases, the approach that staff has taken in this document indicates something more than each individual point that's being raised. I think it's true that in many cases, the individual points were raised, at least to some degree, in previous discussions. I mean, for example, we -- there have been many discussions about the fact that there are aspects of this phase 2 recommendations that involve costs, and the city is not flush, to put it mildly. But in a wide variety of areas, what the city does under those circumstances is put together wish lists, sometimes massive wish lists of things that they would like to do, they don't have the money now, but that doesn't mean that there aren't good things to be done and they're kept sort of in the file until we can move forward and develop better financial capacities. That wasn't, in most cases, the perspective staff took here. They took the perspective that the absence of resources means something simply should not be done, not now, and not ever. I happen to be a very, very serious student of history. And my sense of history is that periods of reform always happen in waves. That is, there's a lot of popular energy and people want change because there's been abuses, real or imagined. And all sorts of stuff gets put on the table of political action, but that never lasts forever. Eventually the waves subside. And there's a desire to return to normalcy. And then after a while, people realize normalcy didn't fix everything and there's another wave. I view the Gestalt of the staff memo to be, "Guys, the wave's over, maybe there will be another one later, and this time it's finished." The City Council may agree. I simply personally put too much time into this and think there are too many good ideas in it to not want to give the last amount of surf from this wave a little Oomf to see if it can go into implementation. Beyond that, there are a couple of specific points that I'd like to either comment on, or ask a question about. But let me wait on that and see if anybody else wants to make any kind of general comment.

>> Ed Rast: Virginia, you're next and then Trixie.

>> Virginia Holtz: A couple of general comments when Ken was talking about his committee and administration, the public records was a different game altogether because of complexity. And because of the different departments, we were looking at the unions, and the employees, and the different departments within the city. So the experience that I had is different than what you had on that committee, Ken. Two things came out of that. In some cases, for the most part, we did receive the concerns, we heard about the concerns in one substance, we asked for concerns and we were told that this -- I will just -- he's here, so I will -- I guess I will just say it. Captain Kirby said that when we asked about concerns about the police department, he said that well, they'd take it to the City Council. So it was a mixed bag for us. Another -- and then we heard these concerns, but there was -- it's different when you're in a committee and then you come to the full task force. And sometimes the full impact of those concerns were not given the time or the attention that the task force could have spent to hear, not that, you know, the full current and what backed it up. My personal concern about, and I'm talking now about the process in general, on task forces, and I don't have a real solution, except that when the way that we set these meetings up, I would have preferred for -- on each of the general topics, to have a quick synopsis from each -- the department that serves that purpose, talking about how it really works, now, so that we could make realistic changes that we could, because we want something that's not going to cost an arm and a leg. That's what our intention was. We wanted open government. Our intention was to do it in a way that would maximize accessibility. But not be so burdensome on the city. And in the fast turn around time of which we were moving every two weeks, the city staff wasn't able to respond to and come back with a full report to us. As an example, on cost estimates on some things. In the -- in our subcommittee work, and or through the city attorney's office, because Lisa was staffing multiple subcommittees, so I understand and understood why we couldn't get more substantive comments and concerns back to us. But it's the nature of how this was sped up, is what I'm trying to explain, that was somewhat of a frustration, that we weren't able to get the full information so that we could make good decisions.

>> Ed Rast: Trixie and then Dan.

>> Trixie Johnson: They are going through a somewhat normal process, making their suggestions, I think it's appropriate that we continue to have a strong presence as Ed and Bob have suggested, to come back in response to the staff comments. I think there's one place where we could kind of foreshadow for the council how strongly we feel. And give them a reflection more of what happened. And that is, in Ed's letter, his conveyance letter where he talks about appreciation for the staff. And I think we could add a comment that the staff was always forthcoming about concerns related to our discussion. And while we didn't always agree with the staff, and continue to disagree with the staff in some regard, we appreciate their strong efforts and feel that they made our effort better. And that would be in your letter, in that particular paragraph. Acknowledging that many of these were raised, that we disagreed at the time.

>> Ed Rast: You want to make a motion?

>> Trixie Johnson: I would make a motion that we add that to the chair's letter.

>> Ed Rast: I'm fine with it. Any comments? All right, all in favor? [ayes]

>> Ed Rast: Do we have reflected -- anybody opposed? Abstentions? So thank you Trixie.

>> Trixie Johnson: I do think that we had an honest exchange. And in both cases our responses to the council are better for it. And maybe that's a better way to say it.

>> Tom Manheim: Didn't even try capture it in writing. We'll go back and listen to it. Thank you.

>> Ed Rast: Thank you, Trixie. Dan.

>> Dan Pulcrano: I agree with Trixie that there was an honest exchange. The thing that's disconcerting to me is the multiple roles and conflicts that this staff played in this. And this isn't in any way to take away from the dedication or hard work they've put into this. But the staff has played three separate roles. In one case, they were in the meetings arguing motion, which in many cases we did listen to because many of the points were brought up were very valid and good. In the second role, they were the ones writing our report. So in that sense they were like our, you know, our attorney or accounting performing a professional service on our behalf. And then, after participating in that process, then argue against us and become the advocate against us. And then in the final role, they will be the people who will be charged with implementation of this ordinance, and also, will be the ones most governed and controlled by it. So they are one, an interested party, second, the ones who are supposed to be playing the advocate role in our behalf in terms of drafting and reflecting our comments. But in the third case, argue against it. So there's conflicts all over the place. So you know, it's kind of like getting to the trial, and finding that your attorney has been also, you know, working with the other party, with the prosecution.

>> Tom Manheim: So now you know why we all feel schizophrenic over here.

>> Dan Pulcrano: So it kind of contaminates and compromises our process here. They'll be charged with implementing it and will be affected by it. So you know, it's like staff gets many bites at the apple. This isn't to say that the motives are wrong because they will have to live with it and they have free speech rights as well. But I do believe this is a public process and that the people have spoken through this and I hope that the council will look at this and also, I would like to think in our transmittal, we should make a request to the council that if there is dilution or weakening of these provisions, either at the time that it is being considered or subsequent to its passage, if there are attempts to dilute, weaken or modify the ordinance, that we be called back, notified, and consulted. Because frankly, this is the third task force and commission I've served on in the City of San José. And in each instance, there were -- there were subsequent attempts, at which staff, not in this case, not this staff, but redevelopment agency, would actually go back and then gut the ordinance. You get citizens who spend a year or two working very hard on these things, and then very quietly, one day, all of a sudden, boom. Your work gets destroyed. So I think out of respect for the work that we've done, if there is any attempts to weaken or modify this, that we be called back and given the opportunity to express an opinion on it. Thank you.

>> Ed Rast: Any other comments? Joan.

>> Joan Rivas-Cosby: Joan Rivas-Cosby. I guess what I want to say is all along, when we have disagreements with staff, the only way we could stop and agree to disagree, was to say, "well, we're going to leave it to council." I'm not sure that's the way we want to leave it because that's the direction we've been going, I agree with the idea that we still need to present our position even though staff is doing you know, what their job is to the council to prepare them for possibilities that decisions they make may not be the best. But see, I'm being schizophrenic here too, because I'm look, well, you're kind of right about that. But the final decision on any piece of this would be up to council.

>> Ed Rast: Okay, let me see if I can make some comments. You know, it's been a really long process. I really appreciate everybody's effort. But let me kind of step back from this a few minutes and look at something. When we look at the community survey, what it addresses is the idea that only 35% of the people have extreme confidence or very much confidence in the public process. So part of what we've been doing all the way along is try to work with the city to come up with a process, come up with sunshine to raise that number, to raise that public confidence. The city is facing tremendous challenges, both on its budget, its general plan and other things. And I think the last election, and potentially a lot of the public comments in the past have indicated that there's not a lot of public confidence here. And I've said one thing, and I want to be really clear about it. And that is, on our worst day, I would not trade San José for many of the other cities in this country on their best days. This is such a much better government and staff and residents and everything else. But that doesn't mean that we can't improve. It doesn't mean that we need not take a look at what we're doing and try to improve it. The budget, in particular, is going to be

a huge challenge for this city. And unless the public has confidence in the taxpayers, residents are going to have confidence, we are not going to be able to solve that can budget issue. You've got to raise the public confidence and the sunshine recommendations are trying to do that. We have attempted and I believe succeeded along with the staff in having what's probably known as the most open and conclusive and going back to the public numerous times and asking for suggestions, recommendations, come on down and talk to us. This is the only task force that I know that's been on television all the time. Although I sometimes friends of mine who watch television say they find, tune into this and find it more interesting than some of the other things on television. Yeah, I know, I'm not sure what that says. [Laughter]

>> Ed Rast: I'm not sure what that says about my friends or some of the people watching. But part of what we really need to take a look at is, the task force has really made an effort to try to listen to and understand the staff's concerns. And in many cases, we change things. In some cases, we didn't. But I think one of the things that, when you look at, in government, not only is public confidence, but you look at accountability. And the accountability portion is, to me, I'll use the word more troubling. The staff recommendation on essentially not to do the accountability section is the most troubling to me. Because the accountability section is an area that sunshine rules or ordinances or laws across the country have found very weak. And I think we put a tremendous amount of effort into, in our committee as well as I know the other committees, in trying to find solutions to this public confidence and accountability area. And to just say we don't have the money to do it, and therefore, what you're saying is you really don't want the public to have confidence in what the city government's doing. Because without accountability, without some feeling that it's there you're not going to be able to get the public confidence up. And the same thing happens in the budget area. When I look at Bob and some people on the budget task force, right now I don't have confidence that the budget's the way it should be. So until we get some accountability in our city government, and the people feel that they have confidence in the accountability, I think we're not going to get the public confidence up. So I think part of what we need to talk about is the idea that these recommendations, a lot of people have spent a tremendous amount of time trying to improve this government. And I think it's necessary that we really take a serious look at trying to, if we don't -- rather than saying yes or no, if we -- if we have a difference of opinion we need to come up with something that's going to improve the public confidence. And I think that means a further discussion by this task force about some of the staff recommendations. And also, maybe with the staff, about where can we come to common ground? We came to common ground on lots of things. But on some of them, I don't think we have. And I think we need a little more discussion on this. Bob.

>> Bob Brownstein: Well, unless there are people who want to make additional general comments I'd like to raise a few specific points for staff discussion. Is that in order?

>> Ed Rast: Fine. I'm sorry, public comment? Go ahead. Yes, go ahead.

>> James Chadwick: Thank you, Mr. Chair. James Chadwick. I was going to second the sense of the task force that there needs to be a response of the traffic to the staff report. There is an enormous amount of input, but the staff doesn't speak of the extraordinary outreach that the task force did, particularly from staff, the task force heard more from staff than anyone else. And it doesn't reflect all of the careful policy consideration that went into the decisions that were made. There's nothing that reflects anything positive about the policy justifications for the recommendations that were adopted. All there is now are the recommendations themselves and the criticisms of those recommendations by the staff. The task force really needs and only the task force can provide the other side of the story.

>> Dan Pulcrano: I think that's a good point, Mr. Chadwick. I also want to point out that in many cases this ordinance was softened from the ordinances that were in other cities at the request of staff. In some senses this is not as aggressive as other cities' ordinances in response to that feedback that we got.

>> Virginia Holtz: Mr. Chair. Could I follow up what Bob -- your suggestion about having some of the -- I just have a question. How formal does this have to be if we just, some of us wanted to get together to --

>> Bob Brownstein: The City Attorney has suggested, I think reasonably, that we continue to exist as a formal body until Rules has dealt with these issues. Which means if we want, we can have a group smaller than a majority, can meet and work out some kind of text. But if we want everybody to agree to that, that would be a serial decision and we should only do that in a public venue. So I'm assuming that the process that we should follow, and council can correct me if this is not appropriate, is that some subcommittee does some initial -- grunt work in terms of trying to put a proposal together and then we schedule an open meeting. I'm sure the city will assist us in terms of space, maybe not dinner but at least space, to be able to get together and be able to reach agreement, and put a draft together that we can

submit to the Rules Committee and the City Council. Pardon? I have no intention of saving the cake in anyplace other than my stomach.

>> Ed Rast: I agree with Bob's comment. Because you know, I spent a lot of time going to Rules. And there were most of the time hopefully I portrayed the task force's comments. But I think at this point I'm a little uncomfortable in the phase 2, in certain areas. And I want to get some input from some of the other people. So if they are not able to go there, that whoever is there can portray their exact opinions and comments. Because I think based on the strength of the staff's comments, I think we need to be able to come back with something in writing.

>> Dan Pulcrano: Will members be able to submit and have written comments?

>> Ed Rast: As individuals, you can always do this.

>> Tom Manheim: These are public meetings. Anybody can comment.

>> Dan Pulcrano: As part of the package.

>> Tom Manheim: And anything would be included. As long as you met the deadlines you would be included.

>> Dan Pulcrano: Secondly, with respect to your suggestion that the task force remain a formal body through Rules committee, that is an excellent suggestion thank you for making that, could that be through adoption --

>> Tom Manheim: That's what I said through adoption of the ordinance.

>> Bob Brownstein: If we want to finish this process work, I think we should see who wants to volunteer to work on this. And if it's less than a majority, then we have no problem. So who wants to volunteer?

>> Ed Rast: I know Bert Robinson expressed an interest in volunteering for the committee.

>> Bob Brownstein: So there's Ed, myself, Mary Ann, Bert, Virginia. That's less than a majority.

>> Ed Davis: I don't count for a lot of reasons.

>> Bob Brownstein: I didn't see you, I'm sore. Then depending how quickly that group can work, we'll get together with Tom to see when we need to have a meeting.

>> Trixie Johnson: We confirmed the first meeting for Rules would be August 15th?

>> Tom Manheim: The first distribution for that meeting would be Friday the 8th. August 8th would be the deadline. So you would need to -- [Off microphone]

>> Tom Manheim: The deadline for the packet is 5:00 on August 7th, Thursday.

>> Ed Rast: Tom, what is the first topic they're covering at rules? Ethics. So effectively we could go -- and the next date after this? Every week.

>> Tom Manheim: It's every week. We don't have a specific -- what we'll get to, we will start with ethics. We'll get as far as we're going to get and pick it up the next date. Similar to phase I. But the order you have in the staff report is the order we intend to move through the items with the exception of administration and accountability. And the police records which we have targeted for two longer substantive discussions on the two dates that I mentioned. [Off microphone]

>> Tom Manheim: Mr. Podgorsek, would you mind repeating that into the microphone?

>> Ken Podgorsek: I apologize. I suggested we should consider setting a tentative meeting of the task force for the first Thursday in August.

>> Tom Manheim: That is the deadline for submitting to the -- submitting your report.

>> Ken Podgorsek: Then it could be in July.

>> Bob Brownstein: It has to be July 31st.

>> Ken Podgorsek: That's fine. Staff is not back. The problem is they're not --

>> Tom Manheim: I think a lot of staff will be absent. I'm not sure, do you need us there or do you want space --

>> Ken Podgorsek: We need somebody from the clerk's office to record, at least take minutes. No, I'm sorry, I guess I'm not speaking, enunciating. No, there we go. I was saying that at the least amount of staff we would need would be somebody who would be able to actively record minutes for the meeting. So we'd have to have at least one staff member.

>> Tom Manheim: Well, let me suggest, I was just going to suggest that you decide when you want to meet, and let us see if we can facilitate that. And if you could give us a person to act as the contact for the subcommittee, or for the group, or -- this is for the general, I guess would be you, Ed, right?

>> Ed Rast: Yes, want to do it the 31st? The 31st is still a -- the city's closed on the 31st, right?

>> Tom Manheim: We're not closed.

>> Ed Rast: Not closed but the council --

>> Tom Manheim: The council is off during the week of July. Pardon me, the month of July. We'll need to check rooms to see if the room is available. If you were to select the week before, Lisa tells me that she would at least be back that week. I think I would be here.

>> Ed Rast: So are you talking about the 24th? The 24th? 24th and 31st.

>> Tom Manheim: So sounds like maybe the week of the -- pardon me, let me see if I can find this. The week of the 21st. So the 24th is a Thursday.

>> Ed Rast: Right. It's Thursday, the 24th, the Thursday, the 31st.

>> Tom Manheim: The 17th, if that may push you too much, but that would be your normal week, normal meeting date for you.

>> Bob Brownstein: Too fast.

>> Tom Manheim: These rooms are used a lot. The first and third are usually -- we'll have to see if that - - we're checking now. By the way, during this little respite while we're check egg, can we assume that you are not interested in getting a full PowerPoint presentation on our report? It seems like most of you have read it and don't need it.

>> Dan Pulcrano: Is there a copy of the PowerPoint online?

>> Tom Manheim: I don't know if it's online but we can certainly make it available.

>> Ken Podgorsek: Mr. Chair.

>> Ed Rast: Ken Podgorsek.

>> Ken Podgorsek: As a point of order, this subcommittee has five members, the members of this subcommittee have to be especially careful not to discuss these matters.

>> Tom Manheim: The 24th is available. So that's Thursday the 24th. It appears to be available.

>> Dan Pulcrano: I'm uncomfortable with the exclusion of other task force members, from knowing what's going to be in that memo. So perhaps maybe we might think through that process. Maybe notices - -

>> Ed Rast: Hold on, let me think through it a second. Let me ask staff a question. First question we had is there is no reason why the other task force members could not make comments in writing back to staff, that would be then distributed, right? Similar to --

>> Ken Podgorsek: That's a serial meeting.

>> Ed Rast: Or is that a serial meeting? Okay, that's fine. Okay, all right.

>> Dan Pulcrano: I agree with Lisa.

>> Bob Brownstein: Subcommittee can put some stuff down on paper. Then that gets circulated because it has to go out long before the meeting, right, because of our own rules so people see that and they have to look at it and come in --

>> Ken Podgorsek: Dan, my intention wasn't to say the task force members on the committee couldn't comment, but to before the open meeting to not create a serial meeting.

>> Dan Pulcrano: No, I absolutely agree. But you understand the issue with the process. So I think Lisa's suggestion to be an open meeting would be best.

>> Ed Rast: We're talking about the 24th of July. Which means that we have -- have the subcommittee's work done by what day? p.m. it would have to be distributed on the 14th, ten days ahead.

>> Ed Rast: The 14th.

>> Tom Manheim: If you want to continue acting on your own rules, it would have to be by Monday, the 14th. If you want to use sort of the more standard rules that we currently operate under, you could do it in a shorter time frame, seven days.

>> Ken Podgorsek: We should do it by our rules.

>> Ed Rast: Stay with what we got.

>> Tom Manheim: Actually what the council approved for you was seven. You have been operating under 10. But under the phase I rules that were approved by council on the 10th of June, it would actually be just seven days.

>> Ed Rast: All right.

>> Tom Manheim: So that would give you until the 17th of July.

>> Ed Rast: Okay.

>> Tom Manheim: If I could just make a note, a couple of notes so that it will help everybody keep track of who you ought to be communicating with for this. I hadn't announced it, because it didn't seem particularly relevant to this group but it's becoming more relevant by the minute. Eileen is actually moving on to another job in the city. We're sorry to lose her. But she will not be the contact moving forward. I'm making a shift on the fly here. Tom Norris will be the contact for you and Tom and Gavin will be here at

the point where you're trying to do distributions. And so if you could get your materials to them. So they can get them and post.

>> Ed Rast: We're going to miss you.

>> Tom Manheim: She'll be here but she'll just be somewhere else.

>> Virginia Holtz: Can we take a show of hands to see how many will be available then on the 24th?

>> Ed Rast: 24th, right.

>> Tom Manheim: And we should make sure that the word gets out to others who are not here tonight, Bobbie, Brenda, Bert Robinson, I know Bert will be here. I'm confident, reasonably confident.

>> Ed Rast: Dave.

>> Dave Zenker: I just had a question for Tom. On your memo dated August 6th, the draft currently, are you intending to revise it again and when do you intend to publish it?

>> Tom Manheim: There may be minor revision. It's essentially done but there are a couple of things, we needed to wait and see what you were going to do tonight on the fees for one thing. So we may be making minor revisions but we don't have anything substantive planned.

>> Dave Zenker: Do you have a target date when it's in final version.

>> Tom Manheim: Yeah, it's the same distribution, we just need to finalize it.

>> Ed Rast: James Chadwick, public comment.

>> James Chadwick: James Chadwick. Just a point of order I think but it's an important one. The report and recommendations have been adopted and approved. But my recommendation would be that they not be conveyed to the council and not be referred to the county until the task force has created its response to the staff memo.

>> Tom Manheim: Well, it will be conveyed, it will be distributed to the Rules Committee at the normal distribution which is five days before the meeting. That's standard distribution for something like this.

>> Ed Rast: We should be able to have -- our report will be completely done. Okay. So what will be going forward to Rules will be the original one the staff comments and our comments. Okay, so it all goes together as one. Thank you. Bob Brownstein.

>> Bob Brownstein: I just wanted to make a few specific comments.

>> Ed Rast: I think Mary Ann has too.

>> Bob Brownstein: Regarding staff response to phase 2. First, I was somewhat disappointed in the staff's reaction to the accountability and enforcement section, which I think is pivotal to the ability of the public to feel confident that the efforts that have gone forward will be sustained.

>> Tom Manheim: I'm sorry, Bob could you speak into the microphone?

>> Bob Brownstein: That the efforts that have gone forward to this point would be sustained. In the staff response it is suggested that an appropriate alternative to what this task force suggested is that the Rules Committee be the place at which someone who feels aggrieved could present their case, despite the fact, should they in fact be the City Council, that the aggrieved person that feels has committed the transgression in the first place. So I tried to think who could express the sense of frustration that that creates in my mind, perhaps more eloquently than I could. And the best language I came up with is the following: "To what purpose our power is limited and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained?" That language comes from Chief Justice John Marshall in Marbury versus Madison, which is the landmark case that provided for judicial review of executive action in the United States, the case that has shaped our entire separation of powers for the last two centuries. I was also disappointed that the staff, both argued that there was insufficient work to justify the open government commission that we recommended, and also, that the process we recommended which would have virtually nothing to do, would require a budget of \$600,000. I could see either one being an understandable decision, but the linking the two, I found to be somewhat peculiar. A couple of points of language, in the area of police statistics, the staff first says that they believe the proposals regarding police statistics, the deal with stopping vehicles and stopping pedestrians could be burdensome for the department. Which I can understand, there are a lot of stops that happen. The report then goes on to say that the quarterly use of force report would be, quote, similarly burdensome. I find that statement to be simply unbelievable, since there is probably one use of force for every thousand stops that takes place in the City of San José, and to argue that report requirements apply to the use of force would be as burdensome as report requirements that are applied to every single stop, makes no sense. And finally, in the discussion of the line item budget, this is on page 33, the staff report says, and I quote, "the city does not use line items for budget control or decision making." Despite the fact that I don't think that's true, I don't think that is something that staff really wants

to say. And I would suggest that they find some way of whatever it is they want to say, that they find a way of conveying it and not saying that anybody is paying attention to the mere yacht line items that make up the entire substance of the entire city budget. Those are my comments.

>> Ed Rast: Mary Ann. Your comments.

>> Mary Ann Ruiz: Actually, I didn't but I will. I guess I'd just like to say that I thought this was a collaborative process. And when we started this meeting we talked a lot about our team efforts. And my idea of, while I'm not expecting as someone said earlier Kumbaya, by any means, I understand there's a debate and there's different points of views. But I thought this was a collaborative process and in this collaborative process I really tried to listen very, very thoughtfully to staff's concerns, particularly around can implementation, implementation costs. And weighing those out, I really thought we were coming out with some very thoughtful recommendations that was inspiring and aspiring. Meaning we're not going to do it today. And I think all of us said that in this room. We're not expecting this to be implemented today, tomorrow or a year. And some of them would take some significant amount of time. So in this way it's inspiring and aspiring where we want to be in the future in terms of sunshine and openness. So I was disappointed to see that most of our -- that most of our -- majority of our recommendations were -- staff does not recommend nor support. I had heard concerns, yes, that's true, I always appreciated our open dialogue and for those reasons I always tried to listen as carefully as I could. If I would have understood that part of the process was at the end, at the final meeting, staff would then tell us in writing, I would have requested earlier that we have the opportunity to hear you, and just as thoughtfully I've tried to do for the past year. So I am disappointed for that reason. I am happy with the report. I do feel like you've captured our recommendations and I appreciate that. But again, I really thought we were working very cooperatively here.

>> Ed Rast: Ken Podgorsek.

>> Ken Podgorsek: I want to comment quickly on administration and accountability. Like I said, I wasn't surprised by staff's report. I wasn't displeased with it per se because they had brought it up. I would have preferred to be pleasantly surprised. I'm going to make a statement I basically made on the first day two years ago. To adopt this entire ordinance without any type of enforcement, administration and accountability section that is effective is basically -- would create a toothless instrument. Putting together the administration accountability took a lot of hours. We looked at it as a process of a lot of give-and-take. The first draft was very cumbersome and it ended up being I thought a very eloquent, very flexible way to look at it that accomplished the goals of openness and open government and transparent government and sunshine in the City of San José. And I thought did it really quite well. I think in the long run, I appreciate that I can agree to disagree with staff's recommendations but I think in the long run, we have to put the point across that we have to have administration and accountability. If we don't have administration and accountability, then we don't really have an ordinance.

>> Ed Rast: Dave Zenker.

>> Dave Zenker: I guess I would provide a brief comment and maybe express a little bit of worry, about whether or not the staff necessarily gave this the full thought that they should have. And I'll just give you an example. The fire department statistical reports, one area that I provided some input on. And the staff recommendation here is that staff is concerned about the butter of quarterly reporting. The fire department does not currently possess the necessary, basically, capacity to provide the requested data. And I know actually for a fact that the fire department produces reports on a lot of these things, not on a quarterly basis but on a monthly basis for the county EMS contract. So for their staff to come back to you, and say that they don't have that capacity, just seems a little bit strange. And so it kind of makes me wonder if maybe they understood what you were asking, or if they didn't quite fully realize quite what they were responding to here. Because it doesn't seem accurate. The staff recommendation here says, continue to report the same data with the same frequency. Well, that would mean basically reporting their response time data every five years. Because that's basically the last time that they updated their Website. So that's just an example of I think maybe some more thought needs to go into some of the information in this report. And if that's what's going to be provided to the council then, we absolutely have to create our own rebuttal to this.

>> Ed Rast: Public comment.

>> Thank you, chair, Antonio Guerra mayor's office. First a point of clarification. Mr. Chadwick indicated that he wants your memo to come at the same time as the staff memo, that's not withdrawing the staff's memo. I've already read the memo, just trying to clarify, that's all. Secondly I think Ed Rast would tell you that the Rules and Open Government Committee went through painstaking detail through phase 1,

newspaper runs hours, numerous hours of the chair's time. And I think staff did an excellent job of doing the pros and cons. And I think the way the memo looks right now, it's almost like just completely negative, because they focused on where they disagreed. But I think during the phase 2 presentation to the Rules and Open Government Committee, I think we'll definitely see and especially if there's a memo from the Sunshine Reform Task Force, a balanced presentation. And I know that speaking on behalf of the mayor's office and I know the other councilmembers who sit on this committee, they will definitely take a look very carefully at all the recommendations in a balanced way.

>> Ed Rast: Thank you. Tom Manheim.

>> Tom Manheim: I appreciate the comments just made. And I was just going to note that the presentation that we never quite got to, the second item, was really going to call to everybody's attention that the staff report really only focuses on where we disagree. There are many, many areas where we do agree, which we did not comment in, in the staff report, only because it would have been so long. We make that very clear in the staff report that it's not intended to be comprehensive of everything. But we certainly understand and hear the task force concerns about the issues we're raising.

>> Ed Rast: Additional comments?

>> Ken Podgorssek: I move adjournment to cake.

>> Ed Rast: Open forum. Any additional open forum comments?

>> Ken Podgorssek: Now there's a motion.

>> Dave Zenker: I was hoping to make a little quick presentation if you don't mind.

>> Ed Rast: Yeah, Dave.

>> Dave Zenker: If you'll oblige. This is actually for our chairperson. And if you'll let me open this card, actually, it's yours but I'm going to open it if being can read it. I shouldn't have sealed it. Stand by. This is on behalf of the task force, sir. I shouldn't have sealed it so well. All right, here we go.

>> Ed Davis: Did you distribute that seven days ahead of time?

>> Dave Zenker: Will you waive the noticing requirements?

>> Tom Manheim: We have a vote of a committee to waive.

>> Dave Zenker: I should come over to you but I'm going to use the microphone. On behalf of the task force Ed thank you for your leadership of the task force and your perseverance to get us to today. I think we're all proud of what we've accomplished and that's thanks in large part to you. I'm not sure if you drink or not. If you do you surely need this. If you don't I figure you can crack it across the edge of the rotunda some day when we finally get things implemented. Best wishes to you.

>> Ed Rast: Thank you. [applause]

>> Tom Manheim: And we're going to show you the cake. The untold story is, this is the second cake.

>> Bob Brownstein: You ate the first cake?

>> Tom Manheim: No. Let me just say that, people who -- and the particular bakery shall remain unnamed. But people who work as bakers aren't editors. [Laughter]

>> Tom Manheim: Want to read it?

>> Look at all the writing.

>> Tom Manheim: The San José Mercury News.

>> Typical Mercury News, it's wrong!

>> Tom Manheim: No, actually, the original version, they chose to be a U.S.A. today headline.

>> Ken Podgorssek: Blinded by sunshine!

>> Make sure they pick it up on the camera.

>> That is clever.

>> Ed Rast: Eileen, see if you can have the camera people pick it up.

>> Ken Podgorssek: That's great. So we need to ask the question. Is that an infringement of copyright?

>> Ed Davis: It's a fair use.

>> Ken Podgorssek: That's a fair use.

>> Ed Rast: We've got to vote adjourn.

>> Tom Manheim: Are we adjourning? [ayes]

>> Ken Podgorssek: We're adjourned.