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>> Ed Rast: I'll comment as we go through each agenda item. Item number 5, you'll have two minutes after the definitions of the city staff policy body, ancillary body and meetings. Even one through we'll go two minutes. Last time around just to remind everybody, we changed a little bit of the format to try to move it along, rather than going through and having everybody go back and forth, back and forth, we've ask the task force members try to limit their initial comments to about a minute or two and have everybody have an opportunity to comment. Let's see if we have an agreement on a procedure, an agreement on away we're talking about. If not, we can go back and go another round on it, that will keep the conversation moving along. So anyway, I think we're about ready. Judy is here, okay. We have a quorum. We will call the Sunshine Reform Task Force to order. And this is the meeting of Thursday, October 19th, 2006. And the first agenda item is, approval of the minutes.

>> Phaedra Ellis-Lamkins: Motion to approve the minutes.

>> Ed Rast: There are any comments, abstentions?

>> I will be abstaining because I was not as the last meeting.

>> Ed Rast: The people that were here, comments on the minutes?

>> The Clerk: Mr. Chair, can the abstentions please raise their hand? If you reviewed the video and reviewed the minutes, you could vote on it.

>> I missed the video.

>> I saw the video. I didn't realize --

>> Ed Rast: Okay, so any discussion? No discussion? All right, all those in favor of approving the minutes? [ aye ]

>> Ed Rast: All those opposed? We have three abstentions.

>> Two. Dave voted.

>> Three, Judy didn't vote. Judy, Susan.

>> Ed Rast: That's what I thought, we had three. Thank you.

>> One of those deals.

>> Ed Rast: Susan, Phaedra, and Judy, we had three abstentions. Thank you. Comments from the chair. I think the last meeting went very well. We made a lot of progress. We want to try to continue that this evening. There's a couple of administrative things. One of the things we talked about previously is the idea that if a task force member wants to communicate with Ed Davis, the vice chair should be included in that communication so that we're aware of what's going on. The counsel works for the entire task force, not for one member. That way we keep it informed what's going on. Administratively, what we started off saying is, we will try to have a first round on each item as we go through. Try to limit your comments making sure you're clear and concise. If you're talking about intent on a particular item please state your intent and then give your example if you need to and try to keep it to about a minute. If we've done like we've done in some of the meetings that did not go well, where people talk for three or four minutes, and then somebody else talks for three or four minutes, back and forth if you do it that way what happens is you waste 20, 30 minutes on a single item. By having everybody say one comment on each item, go around, see if we have consensus, if you think it's a major item,, if not, consensus, restate so staff gets clear direction. And I think that works somewhat well, last time. And then when we get consensus on it before we move forward, we will ask for public comments. Public comments we'll ask to be limited to two minutes and then we'll move to the next item. Let's see, what else? One comment I would say, if you miss, if you're absent to one of the meetings, if you would please try to review one of the tapes, if we start back in again ton next meeting you're up to speed where we were so we don't have to discuss the issues second or third time on it. And that would help out the whole task force. Okay. Let's see, staff, Sheila, item 3, Sheila will go over and explain what the materials are. O sorry. Phaedra.

>> Phaedra Ellis-Lamkins: I just wanted to make sure that we're going to talk about this in the agenda. I'd like to have a conversation about our counsel. I know it's not agendized for today but for the next meeting. Now might not be appropriate but I just want to --

>> Ed Rast: Let's cough that when we get down to the work plan.

>> Phaedra Ellis-Lamkins: Perfect.

>> Ed Rast: When we set agenda items. Sheila.

>> Sheila tucker. Staff prepared two pacts, only one is new information. I know you feel you're bringing wheelbarrows of information to the meeting. The first pact conveyance the agenda and the minutes, the new document titled A-2. At the last meeting staff was asked to go back and make revisions to and do some additional analysis on three definitions for public meetings, city staff, policy body, ancillary body. This is one of the primary pieces we'll be working from at least this evening. Staff tried to if you will look at the table, left-hand column, identify the provision that was referred to staff. And then on the right-hand side, we've identified, some says what subject revisions might be and what the rationale for the revisions. And provided some additional comments on areas that we were asked to do so. There is also an attachment to the comment which lists all the city and agency owned property. That private properties or nonprofits lease or occupy, which I think will become relevant when we get to the definition of ancillary body. That's it for that packet. What I also tried to do, though, as opposed to giving you more information is try to identify those that were distributed via e-mail and are now up on the Website. The first is the staff report on the council policy manual. As you may recall one of the initial reform measures was to post the council policy manual online and that was an update, actually a recommendation to the rules committee for the framework and the process for doing that, for updating some of those policies, rescinding some of those policies, et cetera. That's for your information ton progress of that item. We've also distributed the agenda packet for public information which we've continued with our tradition of document G, H and I, you should have that. It is up posted online in the work link Sunshine Reform Task Force. The other document came October 25th from the mayor's office, identifying some conditions he had, and I didn't bring that to you tonight but you actually have it. It is in the public information packet. That's included as an attachment. And it's referenced in the context of the provision that when we get to that point and we're discussing the calendaring matter you'll have that as a resource and a reference. Finally, we did have some comments that were submitted on the closed session item by task force member Susan Goldberg. Those are up and I'm also happy to provide. The second packet over there is all the information that's been distributed in prior meetings for the public meeting discussion. You have your document A, which is the primary document, B, the red line document, we have the public meeting ordinance comparisons, and we have an agenda and a staff report on the process and time line for agenda and staff report distribution. We also have a list of the standing internal departmental meetings. And then finally, the third packet includes all the comments that we've received from task force members on public meetings. We have four from task force member Phaedra Ellis Lamkins, one from Susan Goldberg, and one provided by the public, and Pulcrano. Credit.

>> Councilmember Yeager: While we won't be discussing the provisions, we'll discuss the framework, I hope you've all had a chance to look at that and are familiar, so we can have a good discussion on that. Any questions?

>> Ed Rast: Thank you, Sheila. Any questions? Thank you Sheila. Okay, agenda item -- we're on now agenda item 5, discussion of public meeting category. All right, so now we get down to work. Phaedra.

>> Phaedra Ellis-Lamkins: Which document are we working from? [ off microphone ]

>> Ed Rast: Let's say we start off. The document you're working off of is document A, which is in the packet itself. The front of the document A is a Sunshine Reform Task Force members meeting -- public

meeting draft No. 2 from Dan McFadden, September 2006. It starts off draft master sunshine ordinance. Document 2A is the supplement to the agenda packet for public meetings, October 17th, from Dan McFadden, and then it starts off, it is --

>> Phaedra Ellis-Lamkins: I'm ready.

>> Ed Rast: And that starts to define some of the questions that were asked by the task force, so we can outline some of the issues. Sheila, go ahead.

>> Mr. Chair, I believe we skipped item 3, or 4. I did want to talk a few Mondays about that. I introduced it as a packet of meeting material. I did want to take a few minutes because as you know, staff has come forward with a public information packet using the same format and we are working very hard on public records which is a significant packet of information. And I just wanted to take a few minutes to talk about what the task force reaction was to this new framework. And if you'd like for me to just go over that, what we've done, I'm happy to do so.

>> Ed Rast: My -- I see what you're trying to do but my concern is that we're going to get into a lot of discussion over the framework and everything else and not get back to the document. Could we move that -- in other words can you describe and then we'll move the discussion of that into the work plan and agenda setting so then we can talk about where we are on that?

>> Sure, that would be fine.

>> Ed Rast: If you want to explain what you've done, we'll have a discussion later on, so we don't spend ten or 20 minutes just talking about its.

>> Okay, yeah. I think I mentioned at the last meeting that staff has had a very difficult time trying to move through the provisions as written in an ordinance style format, which is you know, we're getting stuck on the wordsmithing, I know the task force is getting stuck on it. We really felt it was a function of the format in which we were presenting the information. And that if we really want to move to a more intent based discussion we should present the information to help facilitate that type of a discussion. So what you found in document D, E and F on the closed session material, the first document E we've coined an outline. We've gone through the San Francisco document and used their headers. We posed a set of questions that the task force needs to discuss and give directions to staff in order to draft the language. We've also identified what San José's current practices in relationship to those provisions, what the Brown Act says about those provisions, and so that's how that section is set up. Document E is again a comparison table where we look at the five ordinances, and show how they're different, or the same, in terms of the provisions related to closed session and how they operate. And then document F is what we're traditionally seeing in public meetings, all those referrals referred from the public related to closed session. So truly the outline, we'd like to make sure you found that useful, so we don't move and start drafting -- spend a lot of time drafting other materials in that format and it's not really something that you're finding will be beneficial.

>> Ed Rast: We'll discuss that when we start into the work plan.

>> Okay, that will be fine.

>> Ed Rast: We're we'll move into agenda item 5, discussion public meetings, definitions, city staff, policy body, ancillary body, meetings. We started down through it. Say, we hit -- okay, so we're on page 1 of 14, document A is let's see, definition 2.1, the definitions to the city, let me just go through this and if we have any discussion, otherwise we'll move through it. Do we have any discussion on the definition of the city, city staff or council staff?

>> No.

>> Ed Rast: Susan.

>> Susan Goldberg: I want to talk about this whole, "meets regularly" part.

>> Ed Rast: We haven't gotten there yet. Definitions 2.1 --

>> Phaedra Ellis-Lamkins: Can I just make a recommendation? Several people are working off a different document. I think are we on the A document?

>> Ed Rast: Yeah, the A document.

>> Phaedra Ellis-Lamkins: We're under A draft master sunshine ordinance, under 2, public meetings, definitions.

>> Mr. Chair.

>> Ed Rast: Yes.

>> What's also confusing is the numbering system in A doesn't match A-2.

>> We're using the A. This document.

>> What we thought would be task force advised staff to alphabetize.

>> Ed Rast: What's on 2.10.10, 2.1020, and 2.1030. We're in agreement on those definitions? Do you want me to read them? Okay. Everybody, is everybody on the same page? Okay. All right.

>> excuse me.

>> Ed Rast: Yes, Lisa.

>> I make a suggestion, we start with document A-2. Because we really worked from the document that you're reviewing to come up with document A-2. I think that might be more useful.

>> Ed Rast: Okay.

>> I would agree with --

>> Ed Rast: It's fine.

>> Document A-2?

>> I wasn't going through this, what happened last time --

>> Ed Rast: so what you're suggesting is we just basically start on A-2, on the document we would skip down and look at the same time.

>> I guess what I'd suggest is there are three specific provisions that staff looked at that were referred back to us. I think that's listed on the agenda for today, that's ancillary body, city staff, and then policy body. So you might want to stick with A-2 and see the provision that was referred to staff, which is on the left-hand side, and then the suggested revisions made by staff, and there are reasons for the revisions that can be discussed and then there are some questions throughout there posed. And then when we finish with these three definitions you'll probably want to go back to document A, that will pull up the other definitions that you haven't yet gone through and the other sections of the ordinance that you haven't yet gone through.

>> Ed Rast: Okay, the reason -- all right.

>> If I haven't been clear --

>> Ed Rast: No, you've been clear. What I'm trying to do is, we've got a number of people who haven't been at the meeting for a while. And we wanted to try to go through and get down to the ancillary body, and then make sure that we had no questions on the items before that, and then, I want to try to go back and refer from the ancillary body back to this document and continue on and just continue to go down through the document in sequence order as we go through.

>> I think we're actually saying the same thing. Two sides of the same coin.

>> Ed Rast: Okay.

>> It's just because we've pulled out some of these provisions in document A, it may just seem confusing, because it's been alphabetized.

>> I think we're getting hung up on processing. What Susan pointed out, there is no consensus as to whether meets regularly was included or wasn't included. I think we need a vote or something on that to

give some clarity to staff.

>> Ed Rast: Sounds fine. Move down to 2A. Susan, you had a discussion on meets regularly.

>> When you say 2-A, you mean A-2?

>> Susan Goldberg: This ought to cover bodies that don't meet regularly. Otherwise, it is pretty simple to avoid the ordinance by making your body not meet regularly. I think it should be any formal group but the meet regularly just seems like a way to create a loophole.

>> Can I ask a question of that? [ off microphone ]

>> Groups that look at things like I sit on the airport committee? And I wonder if the group that looks for the RFP for an airport, would that count if we didn't have "meets regularly"? Is that what the suggestion is? I just want to understand, when you say that what I'm trying to understand is from a very practical purpose if you're serving on a committee that relates to the airport, that's looking at the RFP, are we suggesting that that committee as an example would be open, and --

>> Yes, but the point of the "meets regularly" is that that not be a requirement to be an open meeting. That it should be a public meeting if it meets all the other criteria, and it just doesn't necessarily have to meet you know, every third Tuesday or whatever is the thing.

>> Ed Rast: Ken Podgorsek.

>> Ken Podgorsek: Ken Podgorsek. What type of meeting wouldn't qualify for this?

>> Susan Goldberg: One of the many meeting --

>> Ken Podgorsek: No, what I'm trying to get my hands around is, I don't think we need to notice 350 meetings in the City of San José. So what I'm trying to get my hands around is, not -- I understand your logic on meeting, irregularly, getting around the loophole. I understand that. We have to also consider what we don't want to cover. And it might be easier to get to this answer by coming up with an example, what isn't a meeting that shouldn't be -- that doesn't need to be noticed and doesn't need to be public? One like Phaedra suggested, it might be appropriate that it is public. Even though it doesn't meet regularly. What type of meeting shouldn't fall under this?

>> Susan Goldberg: Well, you know, as defined in other places, you know, any internal staff meeting, for example, even if they met every single week, it wouldn't matter. I mean, I just don't think that what we want to do is create a way for somebody to evade it easily, just by meeting, you know, this time we'll meet every fourth day, this time we'll meet every 10th day. Not that I think anybody would do that but -- Judy Nadler.

>> Judy Nadler: Judy Nadler. Closed sessions which are defined very precisely by law, if you are asking about meetings that wouldn't be under this, those kinds of meetings. But I think it's important to note that there may be a body or a committee that meets only once. It may be a one-shot deal. But it may be of incredible importance to the community. So I don't think we should overlook those kinds of special meetings. Because we're focused on, quote, regularly scheduled meetings. So I would agree with Susan's thought.

>> Ed Rast: Ken Podgorsek.

>> Ken Podgorsek: Ken Podgorsek. There are meetings that are made up of the citizenry at large, that are called by department heads, and this is my objection to the removal of department heads, that are extremely important to the public at large, extremely important to neighborhoods. I have an issue, I'm not going to go into detail because it's not apropos with this particular issue. But I have an issue where the UNSCC has been involved in a number of years with a series of meetings with one particular department, was summarily dismissed from that committee without any notice. The only way we found out we were dismissed is when somebody asked why we were not at the meeting. When we called we found out the department head decided we shouldn't be on this committee anymore. This meeting is very important to

the neighborhoods, it is important to the UNSCC. I am working on it, that's not the issue. This type of meeting which is a meeting that meets a few times a year should be publicly noticed. If it hasn't been publicly noticed, we wouldn't have found out side ways. I agree with you, there are definitely appropriate meetings. But I want to go back and say that the removal of department heads in the staff's suggestion does not go to the discussion that we had at the last meeting, department head -- task forces are special groups that are called by department heads need to be publicly noticed and need to be part of this process.

>> Susan Goldberg: I would assume we are going to get to that next, right?

>> Ken Podgorsek: I'm sorry.

>> Ed Rast: Basically what you're saying is delete the meets regularly off of this, do we have a consensus on that?

>> Phaedra Ellis-Lamkins: Can I ask a question?

>> Ed Rast: Yes, Phaedra.

>> Phaedra Ellis-Lamkins: Isn't it already deleted?

>> Ed Rast: It was put back in.

>> Phaedra Ellis-Lamkins: I'd like to know why it was taken off. Then I can understand the rationale for that.

>> Ed Rast: Lisa.

>> Thank you for recognizing me Mr. Chair. Staff's reason as to why it should be included, I think the other document, prepared by task force member Goldberg, perhaps Ms. Goldberg could answer.

>> Ed Rast: She wants to know why it went back in again.

>> Phaedra Ellis-Lamkins: I understand her rationale. I want to understand why it got taken out.

>> Ken Podgorsek: Under staff's reasons for suggested revisions, item number 2 defines the staff's reasoning for taking it out.

>> Phaedra Ellis-Lamkins: Okay. So now, so that -- the issue is that because then there'd be 315 meetings?

>> Ken Podgorsek: Well, that's staff's estimate.

>> Phaedra Ellis-Lamkins: I have a very practical question, which is part of what I worry about, I look as we've done this is how do we make sure to capture the critical things but don't create a whole new bureaucracy on the ordinance? I don't have a philosophical reason for it, I have a practical pragmatic, every group shouldn't be included, but from a workload perspective trying to understand if there are 315 --

>> Ed Rast: Phaedra, I agree with what you're saying. We don't want to overburden the city. We need to cover that a little bit later on. We need to see if we want to delete the word, "meets regularly", therefore get it down, we may be able -- if you're using "meets regularly" vs. irregularly as a definer, what happens therefore, you may miss as a number of people have said, an important meeting. There is another way I think to define what are important meetings rather than the issue of regular/irregular.

>> Could we hear from some of the people who haven't spoken yet, how they feel about the "meets regularly" versus --

>> Ed Rast: Dave?

>> Dave Zenker: I agree with Phaedra with regard to the practicality of this. Definitely the taking out of the words meets regularly, I notice that but noticing 315 or more additional meetings may not be what we're looking for. But I'm not sure what the solution is here. If we can find some language that solves that --

>> Ed Rast: We are talking about two different things here. If your concern is 315 meetings we can cover that as you go through. So what happens is, the really question on this one is, do you want meets

regularly to be left in or taken out and then if we have concerns about defining it later, there's other ways you can actually reduce the numbers. Dan McFadden. Dan has --

>> A point of clarification. I think this 315 basically are internal staff meetings, okay? That's the scheduling. And many of those meetings are only employees, solely employees.

>> Those would be excluded.

>> Those are taken out. So there's a fraction of those. But I think in terms of the amount of activity in the city, of meetings that we have the 315 is a useful number. In terms of trying to use it in this regard, I don't think it's particularly cogent.

>> Ed Rast: Okay. Brenda or Virginia do you have any comments? Any other comments? Phaedra.

>> Phaedra Ellis-Lamkins: So I guess I would with Dave agree that philosophically, but have a practical discussion on this.

>> Ken Podgorsek: Last meeting commented to the task force that many of these details can be dealt with as we move through the meeting, so we cast the net where we want to be cast rather than cast it broadly.

>> Ed Rast: So it can be taken out?

>> Phaedra Ellis-Lamkins: I'm not in consensus yet. I guess what I would say is the conceptual, why it is, I still don't understand why it was taken out, I have a very practical concern about noticing everything. And so if it's not true I'd just like someone to give me information.

>> Mr. Chair, if I could clarify.

>> Ed Rast: Lee Price.

>> The Clerk: Staff is not recommending that that be stricken. That was a recommendation of Ms. Goldberg.

>> No, no.

>> The Clerk: Margie. I just wanted to make the point that it initially was written by staff to include the language that meets regularly. It's being recommended by the task force to take it out.

>> Ed Rast: Okay, it seems like we're going around in circles on this.

>> Phaedra Ellis-Lamkins: I'm just flagging this.

>> Ed Rast: Let's flag the issue. Once we get down through some of the other issues we can come back and take a look. I'm sorry, Virginia.

>> Virginia Holtz: I support the motion or what we've been talking about, reaching a consensus to remove that leaves regularly. Because that leaves it open for additional meetings, as one -- and Judy Nadler pointed out, there are lots of times when one meeting of grave importance, and this would allow that to be noticed.

>> Ed Rast: So let's take the opposite viewpoint. I didn't realize --

>> Brenda Otey: Basically, the way I see it is, as we go through this document, we'll be -- as long as we remember to reevaluate the impact, and make sure we construct language to remedy anything that comes up that is going to really negatively impact or overload a particular group of people, I think it's okay to right now leave that in. But keeping in mind as we go through the document that we need to always recognize the impact of what we're doing, and what the language is we're constructing.

>> Ed Rast: All right. So I think we've got a split, we don't have consensus. Some people want it in, some people want it out?

>> Phaedra Ellis-Lamkins: No, no. I think what we're saying is conceptually sounds great, sometimes we need it in, sometimes we need it out.

>> Ed Rast: You've got some people saying yes, some people saying no.

>> Ken Podgorsek: Maybe we need it in a motion to make clear.

>> Ed Rast: Virginia.

>> Virginia Holtz: Virginia Holtz. I move under ancillary body 1.2.020 (a) that we strike the term, "that meets regularly to advise on" so it would be on the left-hand side of the document A-2 that we're working on.

>> I second that.

>> Ed Rast: Okay, Bobbie seconded it. Discussion. Phaedra.

>> Phaedra Ellis-Lamkins: Can you just show me Virginia at what time will we have a discussion of what it takes to do this?

>> Virginia Holtz: Would you repeat that please?

>> Phaedra Ellis-Lamkins: Sure. So I'm conceptually I'm with you. This number of committees, here's what it looks like, so we can make a decision.

>> Ed Rast: Lisa.

>> I just want to address the motion that was made. I think it was addressed to the left-hand side of the page. And staff would advise or rather ask to come back with some revisions that encompass some of the discussion and intent of last time, to re-work some of that language. And so I think it would be helpful and consistent with what staff was directed to do and what I understood that the task force to want, last time, to work from the right-hand side of the page. So perhaps, and especially we're using the phrase --

>> I think it's just to strike the language, "meets regularly".

>> I understand that. I think that's the intent but the motion isn't clear. I wanted to clarify that, please.

>> Ed Rast: Virginia.

>> Virginia Holtz: I'll rescind that motion that I made so that this is clear for you. On the right-hand side of the page, strike the language, under the staff suggested revisions, number 1, which says "meets regularly and." But there's another part to this that we'll need to talk about.

>> Ken Podgorsek: I question this because as Judy and I have been talking, the reason this is a difficult conversation is we're dealing in a double negative. It's striking amended motion, what we're doing is, we're striking suggested amended language to put it back to the original language which is a double negative and stands for it can possibly be confusing.

>> Phaedra Ellis-Lamkins: You're just suggesting you take the staff recommendation? That's what you're suggesting?

>> Ken Podgorsek: Yes.

>> About staff meets regularly.

>> Ken Podgorsek: That's what you're suggesting.

>> Ed Rast: Do you understand the motion?

>> Virginia Holtz: Does the staff understand?

>> The Clerk: Do you want to rephrase your motion then, Virginia, instead of the strike under the staff section meets regularly, just to --

>> Virginia Holtz: Remove that staff recommendation.

>> Ed Rast: Okay let's -- maybe -- okay. Lee? Would it make sense if Virginia reads the paragraph the way she wants it? And that way, you'll know that --

>> The Clerk: That will be fine.

>> Ed Rast: Okay, Virginia, read it the way that you want it to be. In other words, just read the paragraph, and that way, by not omitting what you don't want in, we'll know what it's supposed to be.

>> Virginia Holtz: The difficulty is that there's additional language on the right-hand side that I think is important for us to discuss.

>> Phaedra Ellis-Lamkins: I will yield --

>> Virginia Holtz: Excuse me, I'm finished, about finished. I think the language is important for us to add, so I don't want to make the motion to include that number 2 on the right-hand side of the page. For some -- because it clarifies some of the positions that are delineating the different entities that would be covered. So I don't know how we can do this to make it clearer.

>> Ed Rast: Judy Nadler.

>> Judy Nadler: I think we're taking this small bite by small bite. But because what we're imtacted, maybe we could kind of look at this particular section, go through a list of what we would like to have changed and then we could have one motion that would incorporate whatever changes we would like to make, and then we're not having to refer to something that we haven't yet decided on.

>> Virginia Holtz: Thank you.

>> Ed Rast: That sounds like a good suggestion. All right. So we'll come back to this. Let's move to the next.

>> We'll look at this as a section, get the full picture, put in, take out, make one motion that includes whatever it is we want.

>> Ed Rast: Susan?

>> Ken Podgorsek: Mr. Chair, if we're moving on on this section, can I bring my motion back? Which is, I think it is not in the interest of sunshine to remove a policy body or department head from this section.

>> Virginia Holtz: That's why I didn't want to add the whole section.

>> Ken Podgorsek: Thank you. Ken Podgorsek. I don't think it's in the interest of open government to remove those two items from this section.

>> Ed Rast: Discussion?

>> Sandra Lee. I just wanted to point out that with respect to a policy body committee, a committee or body that's created by a policy body through formal action is a policy body. So there are actually more procedural requirements for that kind of body. Do you understand?

>> Ken Podgorsek: Yes, it's government double-speak. I didn't mean to say it quite that way, but what you're saying by including policy body we're basically duplicating something else.

>> Right.

>> Ken Podgorsek: My only question is, I believe a lot of language and a lot of government documentation is left to interpretation and I think sometimes a little extra language doesn't necessarily hurt.

>> Is it a motion or some other section?

>> Ken Podgorsek: I think that if you leave -- I think leaving it in doesn't harm it, doesn't cause confusion. And I think it makes it more clear. But I'm not going to -- but I am interested in what the rest of the committee --

>> Ed Rast: Dan, you had a comment?

>> Dan McFadden: I think we're trying to bring closure to this discussion. So I just want to -- I think we should either call the vote or indicate consensus. What are we doing?

>> Ed Rast: They wanted to go through the whole section and come back with one motion.

>> I'm sorry.

>> Virginia Holtz: technically I will withdraw my motion so that we can discuss the whole section all at one time. And I like your idea of putting up there on the board those recommendations on changes that we're promoting. And I think that will bring some clarity for us. Thank you, Dan.

>> Ed Rast: Okay.

>> Ken Podgorsek: Are we going to take, just --

>> Ed Rast: Ken Podgorsek.

>> Ken Podgorsek: Ken Podgorsek. Just for point of order, are we looking at dealing with all the subsections of ancillary body and then doing one sweeping motion, is that what our intent is?

>> Ed Rast: Yes, that's what we agreed on.

>> Ken Podgorsek: All right.

>> Ed Rast: Anybody want to start first on the other sections? So what people should be doing is reading down through pages 1, 1 of 14, 2 of 14, on down.

>> Ken Podgorsek: Mr. Chair, Ken Podgorsek. In reading staff's suggested revision about striking subsection B, I off the top of my head I would say that subsection A covers section B. I would have to concur with their -- in reading both sections I would have to concur that the definition of section A would also -- that there's nothing in section B that wouldn't already be in section A, and I would have to concur with staff's conclusion that it could be stricken.

>> Ed Rast: Does everybody understand what --

>> Yes.

>> Ed Rast: Okay.

>> So Ken if I may ask --

>> Ed Rast: Susan Goldberg.

>> Susan Goldberg: You think the section A would have covered the Dave Cortese neighborhood committee? This is largely a neighborhood --

>> Ken Podgorsek: Absolutely. And the reason I think that is committees are created by the mayor or City Council member. So it is not the City Council, it's a City Council member or mayor's chief of staff, mayor's budget and policy director, policy body or department head I think would satisfy just about everything that you could come up with in section B and so it's just duplicate language.

>> Ed Rast: Sandra do you have a question or do you look like you were --

>> Ken Podgorsek: Mr. Chair, can I ask Sandra a question? I think I dismissed your comment regarding policy body way too quickly. I'd like you to explain.

>> Okay, what you just said with regard to the City Council is a good example. A body that is created 50 City Council or any other policy body would be another policy body. But a body that's created by a councilmember, or a member of a policy body, would be an ancillary body. So -- so basically, a body created by a policy body like the City Council would just be another policy body. So you would have the longer --

>> Ken Podgorsek: So they would be covered under policy bodies?

>> Right, right.

>> Ken Podgorsek: Does everybody else get that?

>> Ed Rast: An example would be City Council created, the new Evergreen visioning task force, I believe it was, previous Councilmember David Cortese created the task force that was later dissolved. What David Cortese created would be an ancillary body.

>> That's correct.

>> Ed Rast: Okay, all right.

>> Does that cover sort of a nongovernmental entities, though, that get appointed?

>> Ken Podgorsek: Explain?

>> Susan Goldberg: Oh, like --

>> Ed Rast: Susan Goldberg.

>> Susan Goldberg: Oh, well -- never mind.

>> Ed Rast: Phaedra.

>> Phaedra Ellis-Lamkins: I was wondering Susan if you are talking about boards of private corporations,

I'm not sure it's under this piece.

>> Virginia Holtz: It's further along in the document.

>> Phaedra Ellis-Lamkins: It's not here yet.

>> Mr. Chair.

>> Ed Rast: Dan McFadden.

>> Dan McFadden: Before we leave this, I would like to again explain what we were trying to capture last time. You have the council policy bodies, have you the council appointees under the charter. Department heads all work for council appointees. If you say only policy body and department heads, you do not address council appointees. And those are the key officers. Those are the six people that are listed here. So I'd like you to say if you would, in here, council appointees and department heads, rather than fuss about it.

>> Ken Podgorsek: That would be -- yes, absolutely.

>> Virginia Holtz: All agree.

>> Ed Rast: Yes.

>> We all agree.

>> Susan Goldberg: Susan Goldberg. Where does it show that it says, appointees and department heads? I'm sorry, I don't see that.

>> Phaedra Ellis-Lamkins: You're suggesting it would be both under page --

>> Ken Podgorsek: It would be section A.

>> Susan Goldberg: Section A.

>> Ken Podgorsek: Where you have the whole litany.

>> Phaedra Ellis-Lamkins: You're keeping and adding.

>> Susan Goldberg: So we're adding a phrase?

>> Ken Podgorsek: We're removing a policy body, because of Sandra's explanation that that would be a policy body, not ancillary body, City Council appointees or a department head.

>> And.

>> Ken Podgorsek: And a department head.

>> Ed Rast: That's a very broad definition.

>> Ken Podgorsek: That's okay, I can live with that.

>> Ed Rast: Some people grit their teeth on how broad it is.

>> Ken Podgorsek: Again, we can narrow it down later.

>> Ed Rast: Any other comments by task force members?

>> Ken Podgorsek: We should comment on C.

>> Wait, we're moving --

>> Ken Podgorsek: We're still under ancillary bodies and now we're into C, and C is complicated.

>> Ed Rast: Brenda.

>> Brenda Otey: As far as adding that section back, that was section B?

>> Ken Podgorsek: That was section A.

>> Brenda Otey: B has been deleted, right?

>> Ed Rast: B has been deleted.

>> Ken Podgorsek: We'll keep track of this for the motion.

>> Ed Rast: Virginia Holtz.

>> Virginia Holtz: I really appreciated the clarity of re-writing this that staff went to, to make this C section much more clear, and not written in a negative. In a double negative, multiple negatives that we had in the original document. There were some -- and I just suggest we use that language.

>> Which?

>> Virginia Holtz: It's under the -- under the staff analysis as written, the staff understands this section to capture, and then it goes on to any entity that, and then there are two points under that particular document. And it seems to capture that.

>> Ed Rast: So you're on document 2 (a), page 5 of 14, on the right-hand side, about half-way down. Phaedra.

>> Phaedra Ellis-Lamkins: I just have a practical question here, because I think this is an issue that you raised, this is where I think it falls under which is 9, okay, perfect. So I notice that groups like the sharks aren't here.

>> Well, I think it's under --

>> Sports facilities.

>> Phaedra Ellis-Lamkins: Sports facilities. So it would be the boards of those organizations?

>> It would be like the sports authority.

>> Phaedra Ellis-Lamkins: Got it, okay. So boards of private organizations essentially that are responsible for core city services. Okay, I just want to make sure that's clear.

>> Ed Rast: Dan McFadden.

>> Dan McFadden: Phaedra, we had a little discussion on this before. Sharks for example.

>> Phaedra Ellis-Lamkins: That's why I'm asking.

>> Dan McFadden: We have a contract with them. We have access to revenue streams that the city gets from them. We have an arena authority which is Brown Acted and it has public members on it that reviews the business of the city in conjunction with the sharks and the operation of the arena. All that is in play. If you're thinking that the sharks should generally open up their corporation meetings, and then we would have to go back into this contract. We're in the 14th year of it and open it all up. And that is, I don't think, feasible.

>> I don't think that is being proposed.

>> Phaedra Ellis-Lamkins: I understand what it would mean but I guess what I'm thinking about is if we outsource core city services like garbage or fire or any other services, what role does it play in us understanding the same issues that we would want to understand from a city just because we outsource a service of the city?

>> Dan McFadden: Let me try again on that. I don't know exactly. When that contract is let, when you are outsourcing, it goes through staff development and then council subcommittee for open discussion, that's Brown Acted and goes to the council for discussion and then the contract is awarded. I'm not following what your interest would be here in going beyond that. It's very hard for us to draft in this area, we've had a hard time.

>> Ed Rast: Susan Nadler.

>> When an outside entity provides city services through this process, understanding that it's an RFP which is public, the discussion is public, it's a public hearing, the council votes on it in public, all of that is fine. The question perhaps is, do we as a community, have a right to know more about that organization, that company, that agency, so should we have the ability to look into what they're doing to make sure? Now, I know from personal experience that much of that is vetted during the RFP process. So you basically don't let a contract to somebody who is financially unstable. But I know the VTA went through a very serious problem with this over the steel that they were using for the tracks, blah blah, because it came from some place that people thought was a problem. So I understand that there is an interest in making sure that the outside contractors be organizations that the public would be able to at least know about. But I would agree with I think what you're saying that that is covered during the RFP process at

this point. And we would never -- you know, cities would never ever have anybody do business with them if we said and, oh, by the way, we need to see your books and by the way, they're open to everybody. That just wouldn't happen. Nobody would ever do any business with cities.

>> Phaedra Ellis-Lamkins: I guess my question is, along different lines, if the City Council appoints somebody to serve on the convention and visitors board, are those meetings public?

>> Ed Rast: Dan McFadden.

>> Dan McFadden: I think "gives them funds" is where the problem is. We had the discussion then with regard to nonprofits. We may be giving as little as a couple hundred dollars. If we put requirements on them, I think it is onerous. I don't know that we can follow up and audit those requirements to make sure we're following through. So it's the scope of this thing that I'm having difficulty with. If you said it was in excess of \$100,000 a year, that this was a -- then we could dimension this thing and we can go after it and we could tell you how many organizations we think that would apply to. That's the problem I'm having.

>> Phaedra Ellis-Lamkins: I'm willing to yield to staff recommendations. I guess when you hire a firm to act in the place@as the city, are they under the same obligation as the city would be? I'm not suggesting we have to be in the middle of the sharks board meeting. If they're making decisions that the city would be normally responsible for acting as a policy maker, are their meetings public when they make those decisions or if there are groups just like the council creates a committee, I'm using convention and visitors bureau just because I know a lot about them. If the council assigns someone, and that group takes action, is that a public meeting, right? It's not a policy meeting created by, but the council formally appoints one. Do those policy groups when they make policy decisions have the same form of sunshine?

>> Ed Rast: Dan?

>> I don't think that everybody is advocating that everybody has to open their decision making processes to the public. I think we should apply the ordinance to the parking commission but not San José parking. We should apply -- you know, if there's -- if there's a sanitation district, sanitation district meetings should be open. But an operating company operating the sewage plant doesn't have to open its facilities. I think what the key here is policy body. If there's members of the public or if the councilmember is sitting on it or the councilmember is appointing someone or the commission member is appointing the members of that then it should be a public body. But if it's a private entity whose shareholders selected, or select the governing board, there's not requirements that it be a certain composition, it should not be included.

>> Ed Rast: Dan, let me ask a clarification question. When we outsource various facilities, there is a series of oversight committees, right? If the oversight committee falls under this particular area, then the contractor himself would not have to do it. Is that what we're talking about?

>> Dan McFadden: I believe that's where we are. I just want to take the opportunity to agree with Mr. Pulcrano. It may not happen again. We can come back and give you more detail. We're trying to get to the point where we know what the intent is, what you're trying to pin down. We don't know all the answers now but we'll try hard to get those.

>> Ed Rast: Lisa.

>> This is a perfect addition to Dan's comment. This was not a suggested revision. We were asked to provide an analysis and we tried to break down what we understood this to mean and if we were tasked to try and draft something it probably would have a little more information. But I don't think we could do that. Because until now, I don't think we understood what the task force wanted. So I just wanted to point that out, in terms of your motion, Ms. Holtz.

>> Virginia Holtz: It wasn't a motion. It was a suggestion.

>> Ed Rast: Ken Podgorsek.

>> Ken Podgorsek: Mr. McFadden, I want to give you an example that is near and dear to neighborhoods. I'll use this example, community centers. We've been outsourcing the running of community centers. Some of these outsourcing are good, but one that is painful is the Northside community center is one that is a bit on the painful side. When you outsource something that is important to neighborhoods like the community center or like libraries, we're not outsourcing libraries but outsourcing something like community center, and the company that you outsource it to, effectively locks the community out of the community center, a process, public process to the contractor, I'm not saying opening up their books or being part of the inner dealings of the nonprofit organization, what would benefit the community at large, I actually think if there was some public process in the Northside situation, the Northside situation may not have occurred. That's at least an example for what kind of things we're looking at, neighborhoods are looking at being part of things that are key to their neighborhood.

>> Dan McFadden: Let me respond. I don't know anything about the Northside center. It seems to me there should be some kind of vetting process. We understand your concern and we'll try and incorporate that in some way.

>> Phaedra Ellis-Lamkins: I would have some language that I would then suggest. Which is so a board or other body that governs a private corporation an LLC or other body, delegated by the policy body to a private corporation, an LLC or other body that provides core services, or receives funds on its city or has on its governing board, a member appointed to be board by the city. If you're performing a core city service or if the policy maker of the city sits on the governing board. I'd be happy to define what core city services should be, but if it's core to the city it should be like other city services.

>> Ed Rast: Comments from the public, Bob Brownstein.

>> The point that Phaedra is making really applies to pages 10 and 11, the language regarding multimember bodies -- [ off microphone ]

>> That said -- that said, I think there is usefulness in the approach that Phaedra's taking, because the original language essentially says, if there is a private company formed to manage the sewage treatment plant, it is a policy body. If there is a private organization, that manages our sewage treatment plant and somebody else's, it is not a policy body. I would think the mere fact that they run two sewage treatment plants rather than one shouldn't be the reason whether they should be a policy body or not. They should be a policy body because they're running a core city service that impacts significantly everybody who lives in this city, whether they run another one someplace else or not.

>> Ed Rast: Dan McFadden, let me ask you a question. When we outsource or contract our city facilities out, do all of those have oversight committees or bodies? Because I think that's another way to look at it. In other words, I'm concerned that --

>> No, they don't.

>> Dan McFadden: They do in the. There is oversight in the process of contracting out, have you to go through, there is a contract that goes into in great detail and the contract is audited. Is there an ongoing oversight on many of these activities? There's not. So that is as good as I can get it. I don't know how to put a fine point on this.

>> Ed Rast: The thing I'm looking at, if there is oversight committee that is a public committee that would be subject to these rules in effect we would have public oversight and a public meeting of it. My concern is if we start to require everybody who contracts with us to have all their meetings open to the public, it's going to be difficult I think and you can comment upon it to get anybody to contract with us. That doesn't mean that at some point in time during the year that they should not come back and be part of a public meeting that would report to the city or the taxpayers what they're actually doing with our money. Susan

Goldberg.

>> Susan Goldberg: I don't think the intent is that anybody who contracts with the city should have necessarily to open up their books. I think it's when people contract with the government to perform a governmental function or service.

>> Ed Rast: Okay.

>> Susan Goldberg: Or service, that is when their meetings should become public.

>> Phaedra Ellis-Lamkins: A core city service.

>> Susan Goldberg: I don't think we're saying the same thing.

>> Ed Rast: To use your example then, if we contract with the garbage company, that's a city service. Does that mean that the garbage company's meetings have to be open?

>> Phaedra Ellis-Lamkins: If they make decisions as a policy maker for the city. If they set things like rates, if they determine the things that the policy makers would normally determine, if they act in a policy matter, it's a conceptual thing. Why not just contract everything out?

>> Ed Rast: But you could stop the issue if you had a policy oversight body, they would make those decisions and they would deal with the private contractor.

>> Phaedra Ellis-Lamkins: That's certainly a solution.

>> Ed Rast: In other words you stop-gab it right there. Judy Nadler.

>> Judy Nadler: From a practical perspective, the individuals at the garbage company for example would be looking at their books and would be looking at the cost of providing services and they would come up with a proposal. But it's not their decision. They would make that proposal to the city. And then it would go through the full -- if all was going as it should, they would go through the full disclosure, full discussion, public hearings, and a vote. So that's actually how it operates. So the concept of having their policy meetings open is actually not -- not necessary because he don't have policy meetings that impact us because none of the things that impact us impact us until the council's taken a vote. And those are all open. So they can -- I mean who knows how many ideas they had, and how many they brought to the city that never flew?

>> Ed Rast: Phaedra.

>> Phaedra Ellis-Lamkins: Judy, that's not actually true. I say that because we run one of those entities. So there are policy decisions that happen practically from either running a city facility or for making decisions that don't go back to the city.

>> Judy Nadler: So have you the final word?

>> Phaedra Ellis-Lamkins: Yes, I'm the practical word for something that happens. You don't go back to the city for example to set -- pardon? You don't go back to the city to set things like rates. So what I'm suggesting is --

>> I think you have to recuse yourself from this conversation. If you have a financial interest in an entity that could be affected by.

>> Phaedra Ellis-Lamkins: Certainly I appreciate that Dan but actually I don't have a financial interest. Thank you, though. So I guess what I'm wondering is, what I think is because people do make policy decisions, in these committees, if what we're looking for is to figure out city services, then we either have to define what are the policy decisions and figure out are those policy decisions made in these committees, right, or create committees right, that govern the very basic decisions but if what we're looking for is when these decisions are made, the public should have access to these services but for core city services, where does that happen?

>> Ed Rast: Dan McFadden.

>> Dan McFadden: To follow up on Judy Nadler's comments, the council is the oversight

committee. These contracts are very specific. If there's any change in them we audit them, it comes back through the process. That's all I can tell you. We talked about real property, the document that is appended to your document here tonight. How many hundreds or thousands, I'm sure it's thousands of contracts we have out for city services. I don't know where you can take this. If you are talking about the convention center and Team San José, I meet once a month and we do a page-turn and we go over everything because we have a contract with them, we monitor it very closely. You may think that decisions are made that are made away from City Hall. But it all comes back through, all their budget is line-itemed and reviewed. Any employee that they hire comes back through the process, any city employee. Yes. So there's oversight. I'm not sure how we can get to where you want to go here.

>> Phaedra Ellis-Lamkins: What I'll do is I'll at least turn in the language that I suggest around core services, some definition. I'm thinking about health and safety of the public, maintain public infrastructure, perform financial operations, operate sewage, water problems, land use planning. I'm not saying you get \$500 to run a public meeting, facilitating, but core services. I'm happy to find them. I'll defer this to page 10 and 11.

>> Ed Rast: Susan Goldberg you had a comment? No? Karl.

>> Karl Hoffower: Judy gave a definition and Phaedra gave a definition and they're conflicting. Dan, I'm trying to figure out the facts on how this actually goes.

>> Dan McFadden: You're making me choose here. No, I believe that Judy is describing the process, and I think there are balances here. If it runs well. If we're doing our job, and we're auditing and paying attention, these contracts are very specific. Any significant change has to come back through the process.

>> Judy Nadler: Can I make just one quick clarification. Judy Nadler. For those who may not have seen these contracts, three are tomes. They are pages and pages of the most nitpicky. You cannot just willy-nilly or on a whim make policy change or rate change. It has to be within the constraints, if you will of the contract. And it does in fact always end up back with the administration that has to implement it, has to collect, has to monitor, has to audit. Has to budget for those things. So --

>> Ed Rast: Phaedra.

>> Phaedra Ellis-Lamkins: I guess I would use Norcal as an example. I would just say that there are a couple of examples that when people are performing core city services, and I guess let me just tell you what -- this is where I guess this is why it's always painful for me to go over the language, versus where I want it to go. What I'm trying to say is what we're looking at here around decisions in closed session, around decisions from everything from union negotiations to allegations, what I'm trying to find out is when those things happen that are core to the city, that those decisions are subject to sunshine. I believe you Nancy, I understand going through the audit right now what it looks like. But what I'm suggesting is, every contract does not need to apply. I don't think we would have the sharks if they had their board meetings open. What I'm trying to figure out is when people act as policy makers on behalf of the city. Because this doesn't exist in the city right now, we don't have anything to worry about, you might say. But if we're creating an ordinance if core city services are outsourced and people asked as policy makers on city or have policy makers on their board making decisions, that they should be open to the same sunshine ordinance that we're suggesting the city follow.

>> Dan McFadden: Just a quick response. I don't disagree with that. I just want to say the practicality is, a council, City Council, City Manager, the last thing they want is a contract that allows somebody out there to do something they don't agree with because they have to pay the price. They get the confrontations and the problems. And it gets just completely displaced. The contracts are written so management can maintain control. We don't allow much flexibility in these, we don't.

>> Ed Rast: Susan Goldberg.

>> Susan Goldberg: Take the example of the rep. The rep takes care of that theatre. Therefore, they would be covered in this. Do we agree that that would -- Dan, is that your understanding of this as well?

>> Phaedra Ellis-Lamkins: No, that's what they're saying.

>> Dan McFadden: It's a facility. That's real property. And my sense is, yes, they are covered under this. As opposed to a service provider, a contract. But I'm not sure -- we're still trying to work our way through this language and make sure that we're on the same -- we know what's covered and I'm not sure, I should ask -- defer to the attorney on this. Does the language, are you satisfied the language covers real property where we have people operating facilities for us?

>> Well, I think -- Lisa Herrick. I'm sorry.

>> Ed Rast: Go ahead Lisa.

>> I certainly think that this anticipates that it would relate to property that the city owns or has an interest. But there's another part to it which talks about performing a governmental function or service, and what staff did, our best to do, is try and capture groups that might come under that. And so this list here could be -- is definitely not exhaustive and it could be overinclusive at the same time. This is put to the task force so you could have this discussion that you're having.

>> Ed Rast: Dan, let me go back to my original question. It would make sense if you have like environmental services who basically outsources things, that you would have within environmental services a city department, an oversight committee that would handle policy recommendations that would be made and agreed with the outside contractor. Otherwise you're going to wind up with the rep as an example, have a meeting that has to be Brown Acted and everything else. Where it would seem from a control point of view that somewhere within the city with an oversight committee you could solve this, we stop it right there and doesn't have to go outside.

>> Dan McFadden: I think that that's what I'm trying to say that there is a process at the staff level where you're talking about policy and you're negotiating with the service provider.

>> Ed Rast: Right.

>> Dan McFadden: Everything you do is tentative and you have to go to the full council. You fine tune it and it goes to the full council board. There is review and vetting that goes into any of these contractual functions and particularly on large contracts with services. Because the council hears from the consumer and they want to make sure they've covered it.

>> Ed Rast: Phaedra.

>> Phaedra Ellis-Lamkins: I want to again say I think I'm talking about, Susan raise heed it in her draft, you're right Bob, it's on page 10. I guess what I'm doing is agreeing with Susan's language, fleshing it out. I want to skip ahead, we can have this discussion, flesh it out on page 10. Susan, what I did is saw your language, I agreed with it but I want to make sure it includes core services. I didn't understand that people had separated out real property versus -- you see that Susan from your draft on page 10. That's where it came from. So that's fine. And then the staff made changes and I'm just going back to that original language.

>> Virginia Holtz: Mr. Chair, Virginia Holtz. The reason this discussion is continuing as long as it has, there's not clarity with the definition of the word "policy." It seems to me that contractual services with the city is not a policy body, because the city makes the policy that gives the parameters for the contract and for that service.

>> Ed Rast: Right.

>> Virginia Holtz: The city or the -- those that are in responsible positions that has oversight of that contract, would be the policy body.

>> Ed Rast: That's the point I was making is -- that's where I was going is, if you've got an oversight committee that is composed inside of a department for instance like environmental services that should be covered by what we're trying to do. Not taking it out to all the people they contract with.

>> Virginia Holtz: The day-to-day operations of a contractual agreement and changes to that is internal to the contractor --

>> Ed Rast: Contractor, right.

>> Virginia Holtz: -- but to me, that is not -- correct me if I'm wrong.

>> Ed Rast: It stops with the committee that is having the oversight. Brenda.

>> Brenda Otey: The language looking at the part of the owned and operated or the part that's on further ahead, is supposed to be a -- trying to capture or in some way make, as far as the ancillary bodies, right?

>> Ed Rast: Right.

>> Brenda Otey: So --

>> Phaedra Ellis-Lamkins: That's why I say, wait until we go there.

>> Brenda Otey: Should this not be under the section on ancillary bodies, but under policy bodies, or --

>> Ed Rast: Would it seem -- okay. What it seems like we're trying to do is cover a broad definition so that if the city sets up a cooperate -- one of the things in here is if the city sets up a cooperation itself, then that in turn would be under the very -- under the definitions you're dealing either a policy body or an ancillary body. If the city has an oversight committee that contracts out to somebody else, that would be where it stops, rather than the contract firm itself that's doing it. Now if the city is, in turn, contracting out the facility, I would think that the whoever's -- assuming there's an oversight -- the problem I see is -- no? Okay.

>> Ken Podgorsek: Mr. Chair, Ken Podgorsek. I think what we're trying to do is we're trying to vet out what meetings should be covered and what not.

>> Ed Rast: Right.

>> Ken Podgorsek: Right now we're only in the definitions section, we're only defining what is an ancillary body. Our difficulty is we want to cast this net but we don't necessarily want to include every possible kind of meeting that might be out there. I think we should focus on where we are, definition, is this a definition that we're willing to accept and then deal with the meetings issue when we get to meetings. That's my suggestion.

>> Ed Rast: All right, Dan.

>> Dan McFadden: I have an intent question. Ms. Ellis Lamkins, is your intention to include or exclude Team San José?

>> Phaedra Ellis-Lamkins: Team San José is already included. Right here it is.

>> Dan McFadden: And you're okay with that?

>> Phaedra Ellis-Lamkins: I assume that you all had a discussion about that. So certainly. Where my question is, because what we're not getting at right now is what the content of what we're asking is. All we're saying is what are these groups. And then you get to the point which I think Judy you were raising which is the process. And I understood that we're not at the -- I think that's what Dan was saying. I didn't think we are at the process of where we are, I thought we're under definitions. So awl we're defining is who these groups are. I'm not suggesting yes, sir that this is what should happen with these groups. We're saying, okay, here's what an ancillary body is. Here is what a body is. Because I have different content based on -- I just learned some and I would say, the process is very exhaustive. You would be surprised around my suggestions of what is included.

>> Ed Rast: Lisa.

>> At least what this document intends to do is give you examples of what groups might be included and

to evaluate whether or not that is what the intent of the task force is.

>> Phaedra Ellis-Lamkins: I understood we are trying to define the different types of groups. We're not saying, here is what these groups had have to do. I'm saying, this is what these groups are. This is what an ancillary group is. Later we have a conversation that says, okay, what rules should apply to an ancillary group. I'm suggesting that we at least include groups so we can have a discussion later. I agree with Judy when certainly the process is exhaustive and thoughtful. What I'm trying to find out is when we get to language, we have the possibility of having those groups included in something but that they're in the ordinance.

>> Ken Podgorsek: Mr. Chair, I'd like to try a motion and see if we can do this. This is just on the definitions for ancillary body. I move that we, in section A, that we strike the -- strike the language, "a policy body" and replace that with "council appointees," strike the word "or" and make it "a department head. Section 1.2 A. This is going back to our original discussion trying to do it all in one. Huh? Left-hand side, correct. Our original language with a little bit of revision. Completely strike section B. Leave section C intact and section D intact.

>> Susan Goldberg: I think you left out the "immediacy regularly" question.

>> Ken Podgorsek: The left-hand side would leave in "that meets regularly". I apologize. Do you want me to restate that, lee? Okay. It makes sense to the task force? That's my motion.

>> Virginia Holtz: I would have the whole circulate --

>> Ed Rast: Restated.

>> Ken Podgorsek: I will restate the motion.

>> Virginia Holtz: Or the City Clerk could.

>> Ken Podgorsek: That would be more clear than would I do it.

>> The Clerk: I will read the motion as I captured it but I don't have a second yet. As it relates to the definitions of ancillary body, in section A strike a policy body and replace it with council appointees and department heads. Strike meets regularly, strike section B in its totality, leave section C intact, and leave section D intact. Did I get that, Dan? Ken, I'm sorry.

>> Ken Podgorsek: That would be consistent.

>> The Clerk: Is there a second to that motion?

>> Second.

>> The Clerk: Thank you, Susan.

>> Ed Rast: Lee, I've got a clarification question. When you say meets regular, right after that it says to advise on, provide advice. Do you see where the strike is? Are we striking to advise on or are you just striking the words, that meets regularly.

>> The Clerk: I would refer to the motion maker because he didn't say that.

>> Ed Rast: Look at A.

>> Ken Podgorsek: Yes.

>> Ed Rast: Fourth line down, you're striking out, "that meets regularly". Are you striking out or the three words after that, "to advise on?"

>> Ken Podgorsek: The way I would read, I'm just going to read it. Committees or other bodies created by the mayor or City Council member the mayor's chief of staff or the mayor's budget and policy director, council appointees and department heads, to provide advice on fiscal, economic or policy issues. I would say if you kept those other words in it would be -- that would be a duplicate.

>> Ed Rast: Right, that's what I was getting at.

>> Ken Podgorsek: You are correct.

>> Ed Rast: Lisa.

>> I said this before and I'm sorry to keep talking about process. But what we did on the right-hand side was actually try and encompass some discussion that came to consensus at the last meeting. And so I can appreciate what Mr. Podgorsek is trying to do in terms of the discussion that's been here today. But I really -- I really think that it would be more useful to work from the right-hand side of the page, because that's something that -- and it's not like we think this is the right thing. It's because we -- we were directed to write something, and we were following the task force's intent and direction. So to go backwards, we're erasing what happened at the last meeting.

>> Ed Rast: So you're on -- you're talking about this paragraph up here? Versus the paragraph over here? Okay. Phaedra.

>> Phaedra Ellis-Lamkins: I think I understand that, and it makes sense. Because part of the suggestions are absent of the ones that are things like the striking language are the things like the word assign was replaced by established as directed. Some of these are pretty basic grammar changes that I think are okay, because we don't change the intent of the ordinance. So it might be worth even taking a minute or two to let people read these. Because I think it's okay to have language that makes more sense.

>> Ed Rast: Okay, comments, discussion? Want everybody to read for a few minutes. Brenda.

>> Brenda Otey: I agree with what Phaedra said. What I'd like to also -- if there's a need to add back in department heads, in the section that's on the right-hand side, where that would go, because the language on the right doesn't -- read much easier. And I think it conveyance all the information, if there's something that's absent that we want to include or put back in there, like the department heads, then if we can just know where that would go, I think it would be clear.

>> Ken Podgorsek: I can -- I can amend my motion to accept the language in section 2, but I can never accept the language in number 1. As long as section 2 adds the language, "and department heads." Yeah, it --

>> Brenda Otey: Take out the meets regularly and it would say any formal group that is established by to serve as an advisor to.

>> Ken Podgorsek: For sake of this discussion, I'm willing to withdraw my motion and restate it. My second would have to agree.

>> Yes.

>> Ken Podgorsek: I move that the language -- we're very clear, I'm going to read it. I move that section A be revised to read, any formal group that is established by exists to receive as an advisor to a member of the city council, the mayor's budget and policy director, the City Manager the City Attorney, the City Clerk, the City Auditor, the independent police auditor, the executive director of the San José redevelopment agency, or department heads.

>> And.

>> Ken Podgorsek: And department heads, sorry, and department heads. And the rest of that motion is that section B is struck --

>> Ed Rast: Wait a minute. Before you go on. You're stopping here?

>> Ken Podgorsek: It's dealt with in the first line. Section B is struck. Section C is kept -- C and D is kept as-is.

>> So is that the underlying part or the part that is not underlined?

>> Ken Podgorsek: The complete section, I'm assuming --

>> Phaedra Ellis-Lamkins: Because this is the same thing 2, C. If you look at it it's rewritten, underlined. Which one are you keeping?

>> Virginia Holtz: Which side of the page?

>> Ken Podgorsek: left-hand I'm sorry. When we're talking about it from the staff's standpoint, this is

where staff took a different approach. They weren't rewriting the language, they were making comments to the language that was in there. We're going back, forth, back, forth. Which is making the process difficult. Your comment is that the underlined portion -- I need to ask staff. What's the difference between the underlined and the lined portion? Is it intended to be one complete section? Is it intended to be --

>> It's the same thing written differently.

>> Ken Podgorsek: I'm trying to understand staff's notes.

>> Stay with one person.

>> Ken Podgorsek: Okay, whoever.

>> Ed Rast: Lisa.

>> Did you want me to respond?

>> Ed Rast: Yes, please.

>> We didn't write the left-hand side. It's actually not the same thing, it starts out the same but goes into talking about actually what would happen. I would say the first part of section C is trying to define what an ancillary body would be and then the underlined portion seems to talk about how -- what would happen about meetings and then what would happen with records. And everyone might want to take a moment to just read that to themselves.

>> Ed Rast: Dan.

>> Dan Pulcrano: I have one question. I agree with Ken in general. I want to see if the attorney to this body, the staff attorney, Mr. Davis, can give us an opinion as to whether the double threat shall is more restrictive. The original language said, bodies created by the staff recommendation has a double threshold. Because it's established by and exists. So I don't know if that's material or not but I'd like to have our staff -- Mr. Davis give us a opinion on that.

>> I'll respond to that, Lisa Herrick. We actually didn't make a recommendation. As I read you may disagree, what we tried to do is clarify actually what we understood this to say. I do see an and after mortgage. So I think that the original language on the left does require both parts of that. All we tried to do on the right-hand side was to make it simpler to read that sentence. And having said that, we're not quite sure what that sentence means and what this group wants to encompass by that language.

>> Excuse me, Ken because --

>> Ed Rast: Brenda.

>> Brenda Otey: Because it sounded like A and B, the motions that are made are fine, if we can do A, B and D, come back on C and once we have a chance to go over it --

>> Ken Podgorsek: My only concern is I can somewhat deal with that in the sense that --

>> I was talking about A, by the way. Not the mortgage paragraph.

>> Ken Podgorsek: You're talking about the language as established by and exists to serve?

>> Dan Pulcrano: By and exists.

>> Ken Podgorsek: Other bodies created by.

>> Ed Rast: Susan Goldberg.

>> Susan Goldberg: Susan Goldberg why is that paragraph there? A on the left side it says committees or other bodies created by, and that is changed to "committees or other bodies established by and exist to serve."

>> The change was made because -- well, it actually somewhat parallels the San Francisco ordinance for one thing. We looked at that. And it seemed to capture -- well, for one thing we didn't have to repeat the lengthy group of persons who could appoint a policy -- an ancillary body. So we started out by saying it's established by this litany, this group of people. And there was one, I think, iteration of this that said to advise, and then a long group of people. So that was the --

>> Change "and" to "or" and then it works.

>> Ken Podgorsek: I don't have a problem with that. We're wordsmithing but is there a legal -- Lisa, is there a legal difference here, if we change the word to "or"?

>> Well, I think there would be technically because then a group wouldn't have to meet both sides of the and. As a practical effect, I'm not quite sure that that would come up. But I don't know because I haven't had a chance to really think about that obviously. Did my explanation make sense to you though?

>> Ken Podgorsek: Yes.

>> Because I would like to make sure that what I said makes sense.

>> Ken Podgorsek: Let me ask this question. Let's go from a theory standpoint. Would you ever have a group that was established by? To exist you have to be established by. The "or" doesn't make sense, you can't exist if you haven't been established.

>> It could be established by voters. What's the worse case scenario with the and?

>> Two sides have to be established.

>> Ed Rast: You have to be established and exist.

>> It isn't clear, if one group establishes it but it exists to serve another, it could create a gray area which would be problematic and not clear in intent.

>> I really do, I think how can you not exist if you haven't been established? I think the language was written in humanesque here, to try to make it as simple to read as possible and we're trying to turn it back into legalese.

>> Why not just create it?

>> Ed Rast: We have public comment, Bob Brownstein.

>> In the last session of the committee, the reason the language, "established by" was brought forward was in an effort to establish informal groups from informal groups. A group that exists that has not been established, and this is the example that I used, are two people from San Pedro street calling the mayor's office to complain about a barking dog and meeting with somebody on the mayor's staff. That's a group, it exists but it's clearly not something that we want to define as an ancillary body. An answer layer body is a group that's established, the mayor creates a group, establishes a group, and the group is going to advise the mayor with how to deal with truant youth. They meet and have a policy. That's how that language came to be at the last meeting. And I believe then, and I believe now, that the distinction is a useful one, to help make it clear we're talking about formal groups and not informal constituent actions.

>> Ed Rast: Phaedra.

>> Phaedra Ellis-Lamkins: I'm going to support moving forward but it doesn't seem to me the or, and, any of us really understand the difference. I'm willing to go to created, whatever it is. But I think we're going to have lots of opportunities to have this --

>> Ed Rast: Review it.

>> Phaedra Ellis-Lamkins: None of us are attorneys that do this for a living. As long as it creates the skeptic, I'd like to move forward so at the end of the day, we'll feel that we've accomplished something. I agree with Susan, if it's created or established, I understand we changed it from created to established, if we want to go back, if the intent is there then I would like to call the question, move the question, or put the motion back on the table.

>> The Clerk: If I can interject here, this is the parliamentarian, Lee Price. I want to check back with Ken and Susan regarding the former motion that was on the floor, was that withdrawn?

>> Ed Rast: Right.

>> The Clerk: I do not have a second on Ken's restated motion.

>> Ken Podgorsek: May I ask before somebody seconds? Because we may need to amend this

motion. We may need to change this motion again. Do we have consensus on C? I mean are we still discussing, are we still confused about C? Should we withdraw --

>> Phaedra Ellis-Lamkins: C has a lot of questions.

>> Ken Podgorsek: Let's do this. If we don't mind, I'd like to do something we can move forward with, and we can --

>> I liked your original motion which was the left-hand column. Staff's rewrite of A creates a problem that I have some questions about.

>> Phaedra Ellis-Lamkins: Could you explain the problem Dan? Because that would be helpful.

>> Dan Pulcrano: I think the original drafting is much clearer. It's -- you know, if it's established by and exists to serve as an advisor to, does it have to be the same body that establishes it and advises, if the council creates the body to advise the sports, you know, the sports and arena authority, is that -- is it covered or not? Because it's not the same body that created and is getting the advice? There's a lot of ambiguity here. I think the way it was originally written is fine and really good.

>> Ed Rast: Which is?

>> Phaedra Ellis-Lamkins: I'd like to second the original Ken motion then.

>> Ken Podgorsek: That was withdrawn. I think I get it. Let me withdraw my second motion and let's try a third one. But I'm going to explain something. I think I get what everybody is saying. I think the words established by, I understand what Bob is saying too. I think that is a bit problematic. I don't think the word created would include two people from San Pedro street getting together with the councilperson. Because the creation in itself is an action. And we're defining those people. So what I'm going to do is merge both sides a bit. So let's try this.

>> Ed Rast: Let me clarify. When you say is established by and exists, you've got two conditions there, or you only want one condition?

>> Ken Podgorsek: I'm going to try this slightly different and see if this makes some sense. Let's try it the third time's the charm, you know. I feel like I should be playing for the mets. All right. I move that section A states, any formal group that is created to serve as an advisor to a member of a policy body, the mayor, a City Council member, the mayor's chief of staff, the mayor's budget and policy maker, the city clerk, the City Manager, a department head, we delete section B, we defer section C for further discussion, we keep section D.

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

>> Brenda Otey: I'll second.

>> Ed Rast: Brenda's seconded it. Discussion?

>> Call the question.

>> Is the word formal required? Staff says it's probably not required.

>> Ed Rast: Dan McFadden.

>> Dan McFadden: I think it's a much clearer discussion to deal with if it's formal. Going back to what Mr. Brownstein said, when it's all said and done we'll have to interpret this to a lot of people.

>> Ed Rast: That's an amendment then?

>> Dan McFadden: No, it was in Ken's motion.

>> If the mayor appoints a ten-member commission is that a formal act?

>> Dan McFadden: If there's an action taken, in a public body, it's a formal action, there's a record of it. Ken's motion included the term formal. I was just speaking to that. You said you wanted to drop it. I'm saying it's much clearer with it in. Because we got back to what Bob said here, what Mr. Brownstein said. I don't know what creates is.

>> Was Cortese Evergreen a formal act or informal?

>> Dan McFadden: I would believe that that's -- I don't know. I don't know. That's one of those gray areas, that's what it is. Where are we drawing the line here Dan? I don't know. I can ask you a question. Let me stop right here.

>> Ed Rast: Susan Goldberg.

>> Susan Goldberg: I would say I'm a little wary of the use of the word "formal" because I do think it could exclude some groups that got appointed to go study something. And some of those groups might well fall under and be studying and recommending things that we would want covered by this ordinance. So I am a little weary of formal. Because formal to me implies a vote.

>> Ed Rast: Margie or Judy.

>> Judy Nadler: Judy Nadler. In this case the semantics are really important. So some people, I'd say perhaps the average person, who is asked, is there a difference between a formal body, or a formal committee and an ad hoc, would probably say an ad hoc isn't the same. Well, you know and I know that an ad hoc committee makes decisions. Discusses policies, and I guess the part of this that, if I grow Mr. Brownstein's example, let's say that there are 15 people who assemble themselves, who create, maybe they create a neighborhood association. Maybe they create citizens to save the branch libraries or whatever it might be. And they begin policy conversations with someone on the council or with the mayor. So are those -- if we say only formal meetings then that would not be covered. But those are things that, should they be moving towards formal meetings, you know, so if you say formal, I think you offer the opportunity for people to say, well, I didn't really consider it formal and somebody else would say no, it actually seemed very formal to me.

>> Ed Rast: Ken Podgorsek.

>> Ken Podgorsek: That was not my intention. My intention was to give good language. I withdraw my motion, if the second agrees.

>> Ed Rast: Second agrees. Just amend it.

>> Ken Podgorsek: I can amend it but I'm going to be changing the whole language again. Okay.

>> Ed Rast: So we've got the motion is withdrawn, the second has agreed. New motion.

>> Ken Podgorsek: Let's try it this way. You know what --

>> Brenda Otey: Was I the second on that motion? I haven't agreed to.

>> Ed Rast: I'm sorry. Lee.

>> Brenda Otey: I might agree but I haven't yet.

>> Ken Podgorsek: There was a reason I liked the original language because I think it didn't cause this issue. But there is advantages to language in both sections. I'd like to state it in a way that will get rid of this issue.

>> Ed Rast: Brenda.

>> Brenda Otey: Let's put it this way.

>> Ken Podgorsek: You want to try --

>> Brenda Otey: I want to hear what's put forward first.

>> Ken Podgorsek: Let me tell you what my proposal would be. Committees or other bodies created by the mayor -- committees or other bodies created to serve as an advisor to a member of a policy body, the mayor, a City Council member, the mayor's chief of staff, the mayor's budget and policy director, the City Manager, the Stone, the City Clerk, the City Auditor, the independent police auditor, the executive director of the San José redevelopment agency and department heads.

>> Brenda Otey: Then my question is, is everything covered under committees, and other bodies?

>> Ken Podgorsek: That's a good question. I would think -- well one of the questions that was brought up here and this is at least my way of looking at it and I'd like to ask what staff thinks, I don't care which staff

member answers that question, I would think that question would cover a body like the task force that Councilmember Cortese convened a while back.

>> Ed Rast: Lisa or Dan.

>> Dan McFadden: Dan McFadden, I think it would cover it. Our perspectives are different here. I'm trying to say how do we explain this so we can administer it. And so if it's not a formal group it's an informal group. It's got to be one or the other.

>> Ken Podgorsek: I don't agree with that entirely. But I would also say and go back to an earlier comment that I made. What we're dealing with here is definitions. We're defining an ancillary body. We're not necessarily -- we're not saying that just because they meet the definition that they're necessarily going to be you know included in what -- included the meeting section of this document. We can -- in those sections as we continue to go through the document, we can define what, in a better detail what we do intend, and what we don't intend. And that's what my --

>> Ed Rast: Dan.

>> Dan McFadden: I think that's fair. We're trying to create the perfect ordinance as we're going. Once we get the full document we'll be able to go piece it much better.

>> Ed Rast: Dan.

>> Dan Pulcrano: We're making a mistake here because we already decided this issue. We went with A. And the only decision point is whether regularly or not was included. I don't think we should open up something we already decided on. We should go with the language and delete regularly if that's the consensus.

>> Dan McFadden: Is that your position throughout that we're not going to open anything once it's closed? I need to --

>> Dan Pulcrano: I think if we made a decision, staff is coming back and saying well we think we have better language. But we clearly described our intent.

>> Ken Podgorsek: In fairness --

>> Ed Rast: Ken Podgorsek.

>> Ken Podgorsek: In fairness to staff I think there is some improvement in some of this language. By adding some additional detail I think that it's going to be easier to understand. As you can -- and by the way, I'm still looking. I did that, but we need to go back to this motion. Brenda, that would be my motion. If you want to withdraw your second on my motion number 3, that would be my motion number 4.

>> Brenda Otey: Instead of saying any formal groups that it reads committees or other bodies?

>> Ken Podgorsek: Committees or other bodies created by and to serve as an advisor and the rest of it.

>> Brenda Otey: Created to serve, okay.

>> Ed Rast: While you're thinking bit Bob Brownstein.

>> There's unfortunately, a big difference between created by, and created to serve. Because created to serve could be created by anybody, including the two people who don't like barking dogs themselves. So when you say created to serve, it means, if me and my neighbor create our own body, to call our City Council member and say we got a problem, we're an ancillary body. I don't think we want to do that. Though I understand Judy's point that at some point you could get a thousand people all working together and then they meet with the mayor, I mean, I think the critical distinction here is do you want to have sunshine on things that a City Council member or the mayor or some official creates or do you want sunshine on any communication by any group however small and however informal with their government. And I'm assuming you don't want the second one so the critical word here is by.

>> Ken Podgorsek: Created to serve is absolutely okay with me.

>> Brenda Otey: Did you say by and to serve?

>> Ken Podgorsek: No committees or other bodies created to serve as an advisor to a member, the whole litany after that.

>> Ed Rast: Brenda, you need a decision as to whether to withdraw it --

>> Brenda Otey: I'm trying to understand what the language is so I can actually make the decision. Because it's created by and to serve, that would make sense. Because right now if it's created to serve, it's not saying -- anybody could create -- could step forward and be a body and say that they're created to serve.

>> Ken Podgorsek: You're right. We're splitting hairs but you're absolutely correct. What you're saying is that we go committees or other bodies crated by and to serve as an advisor to a member of a policy body, blah blah blah blah.

>> Ed Rast: All right, are you withdrawing your motion?

>> Ken Podgorsek: All right, all right. I'm getting it, letter, let's try it again.

>> Ed Rast: Wait a minute. You can't -- okay. Procedurally, what you have to do is, you have to withdraw your motion before you can bring another. We've had a long discussion about --

>> Virginia Holtz: His was a second to -- Virginia Holtz. Brenda's was a second to --

>> Ed Rast: That's correct.

>> Virginia Holtz: -- Ken's earlier motion.

>> Ed Rast: She's not withdrawn her second.

>> Ken Podgorsek: They cannot withdraw on their own.

>> Ed Rast: That's what we're saying. You've withdrawn the second.

>> Brenda Otey: I withdraw the second.

>> Ed Rast: No motions on the table.

>> Ken Podgorsek: we can redo the motion. I think I have got it.

>> In your original number 1 motion back an hour ago, you were using the term council appointees. Can you just confirm for me, maybe this is obvious to everybody else, that list of people is in fact an exhaustive list of those people? We feel good about that, everybody's on the same page?

>> Ed Rast: Ken, there's no motion on the table. Recognize Ken Podgorsek.

>> Ken Podgorsek: I move that section A be stated ancillary body means section A committees or other bodies created by the mayor, a City Council member, the mayor's chief of staff the mayor's budget and policy director conditional the City Manager, the City Attorney, the City Clerk, the City Auditor, the independent police auditor, the executive director of the San José redevelopment agency and department heads to serve as an advisor to the member of -- to a member, to a member, I'm sorry now I'm lost.

>> You did right.

>> Ken Podgorsek: To a policy body.

>> Ed Rast: That's your motion on A.

>> Ken Podgorsek: That's my motion on A. We strike B, we defer C to further, we keep D as-is.

>> Quick question. Could you reread from to serve?

>> Ken Podgorsek: To serve as an advisor to a member of a policy body.

>> Ed Rast: Period.

>> Ken Podgorsek: Or official. That's actually why I stalled. I'm sorry we have to go to that. If you serve as a member to the policy body or official, because -- or official.

>> To serve as an advisor to any of the above.

>> Ken Podgorsek: There you go, can I do that?

>> That's why we all settled on the version that is on the right-hand side, because that doesn't require you to list the persons who could create an ancillary body. You asked me why it was structured that way, I

said that maybe 20 minutes ago.

>> Ken Podgorsek: Nobody said we could do this fast.

>> Ed Rast: Lisa, is this clear what he stated, two, is in an objection or concern?

>> I don't have any objection or concern. We could repeat all of these and I think it would get to your intent if you wanted to afterwards.

>> Ken Podgorsek: Okay, let's try this.

>> Does any of the above work? Something like that?

>> Phaedra Ellis-Lamkins: I think she says what works is on the paper.

>> Certainly there are other ways of having something to work.

>> Brenda Otey: Created by and to serve.

>> Ken Podgorsek: I'm okay with that amendment as long as it makes sense to everybody. It makes sense to me.

>> Ed Rast: Lee price do you have it down?

>> The Clerk: Yes, I do. Read it back?

>> Ed Rast: Yes please.

>> The Clerk: Section A will read committees or other bodies created by and to serve the mayor, the City Council member, to mayor's chief of staff, the mayor's budget and policy director, the City Manager, the City Attorney, the City Clerk, the City Auditor, the independent police auditor, the executive director of the San José redevelopment agency or department heads.

>> Ed Rast: And department heads.

>> The Clerk: And department heads. Period.

>> Ken Podgorsek: Period. Strike B, defer C, keep D.

>> Ed Rast: Discussion, Marjorie.

>> Margie Matthews: First, I apologize for being late. I am supportive of this. I do need to get consensus that we are talking about definitions and we're going to have a discussion much later on what we're going to require these ancillary body do.

>> Ken Podgorsek: Yes.

>> Margie Matthews: And what about this case, what about that example and the one that came to mind is the two mayoral candidates right now have bodies that they've created to advise them, mainly political strategy bodies, kitchen cabinets. Would they then be called an ancillary body?

>> No.

>> Margie Matthews: Why wouldn't they? They are formed by a member of the council to advise.

>> Not public policy.

>> Ed Rast: Other discussions?

>> The Clerk: I may have left out three or four words. Section A will read committees, or other bodies, created by and to serve as an advisor to the mayor, councilmember, mayor's chief of staff, mayor's budget and policy director, move over here --

>> Lee, I'll stop you. You're right except you excluded to serve as an advisor to a member of a policy body.

>> The Clerk: Very good, thank you. Okay. That would be your motion, right?

>> Ken Podgorsek: You got it, yes. We can give you Joan's notes.

>> Yes, they're very pretty.

>> Ed Rast: All right so --

>> Ken Podgorsek: You got it?

>> The Clerk: You were the second on that?

>> And there's no formal on that.

>> Ken Podgorsek: No formal.

>> Ed Rast: Lee would you read it again please?

>> The Clerk: Sure. Okay. I'm going to attempt to get the whole motion here okay? Section A will read, committees or other bodies created by and to serve as an advisor to a member of a policy body, the mayor, the City Council member, the mayor's chief of staff, the mayor's budget and policy director, the City Manager, the City Attorney, the City Clerk, the City Auditor, the independent police auditor, and department heads. Strike --

>> Ed Rast: Executive director of the redevelopment agency and the department heads.

>> The Clerk: I'm sorry. Got it, include the RDA and department heads. The balance of the motion was to strike B, defer C for further discussions and keep D.

>> Ed Rast: Ken, what was the very end of -- so in other words, so you -- the area that we had before to provide advice in fiscal, economic and policy issues, you've decided not to include?

>> Ken Podgorsek: I don't -- I think that the section as it reads is inclusive of that. And I don't think it necessarily needs to be defined.

>> Should we call the question?

>> Ed Rast: I call the question. All right, all in favor? Aye. All opposed? Any abstentions? The motion passes. Thank you.

>> Can Ken diagram that?

>> Ed Rast: All right, so the next, we've got section C. No, we are you going to defer it and discuss it now? Deferral doesn't necessarily mean -- it means in the future after the motion is finished. So the question is do you want to discuss it now or defer it to sometime in the next meeting?

>> I'd say let's get it over with.

>> Ed Rast: Okay so we're now going to discuss section C.

>> Ed, we're scheduled for an 8:10 agenda item.

>> Yes, did we already pass C?

>> No, we deferred it to another time.

>> Virginia Holtz: We separated it out from a motion.

>> At a prior meeting did we pass it?

>> At the last meeting actually staff was asked to go back and do an analysis of what they thought this meant.

>> But if we take no action on it, it stands?

>> Ken Podgorsek: Mr. Chair.

>> Ed Rast: Ken Podgorsek. I'll let Judy do.

>> Judy Nadler: I think Dave makes an excellent point. We actually have 20 minutes left and I'm guessing people may have some extended comments on either the upcoming agenda and work plan or item 7 and we also have to leave time for the public comment. I think we've kind of chewed up the A, B, C, D thing, it will maybe taste better on the next meeting.

>> Ed Rast: Agenda item VI. Upcoming agenda and work plan. All right. So the motion we had two weeks ago, was to -- that Marjorie made was to basically stop talking about procedure and continue on through. So is that what the consensus that we'll continue to do, or do you -- all right. So we're going to go back, to so basically what -- Ken Podgorsek.

>> Ken Podgorsek: If you like I'll make a motion.

>> Ed Rast: Make a motion.

>> Ken Podgorsek: I move we continue on the work plan as we have done on the previous meetings and

we extend our review time period.

>> I second that motion.

>> Ed Rast: Second the motion, all right so we have a second. Discussion? Okay, what --

>> Ken Podgorsek: The motion is that we're -- I will paraphrase the motion. Is that we're going to continue working on this without discussing -- without discussing process.

>> Ed Rast: Does that -- that was the motion and the second. Who was the second on it?

>> I seconded it.

>> Ed Rast: All right, so we have a discussion.

>> So my question is, does that mean we're going to continue to discuss things and then staff rewrite, and then we come back and discuss it again?

>> Ken Podgorsek: No, we're starting -- what we did today is started the work of actually establishing the language. In three of those sections, we established this is the language we deferred. One we deferred because we couldn't establish it and that we continue moving along in this process.

>> I think the motion at least from the last meeting we talked about is what we're saying is we're going to keep moving forward with working. It's not the question of the deliberative process. So the motion is not do we create stuff and then does staff look at it. The idea was when we first talked about this we needed to set a time period where we're focused, for this period of time we're going through just definitions, content, not to create, are we going to committees, are we going to this, are we going to that, so we have a period of time. There is a separate issue which is a issue of the deliberative process, the issue of how we get to content. But this issue is just agreeing on we're going to focus on content for this period of time. We didn't have a discussion at the last two meetings that said should we go into committees, should we subset ourselves off, we weren't having that discussion. We were just going to have the lets get in a group together and focus on what we're doing. So that's a separate issue what you're doing Susan.

>> Virginia Holtz: To put it simply, we have an agenda, we did it tonight. We did not cover everything on the agenda, we're just going to continue with this agenda. This is our work plan and that's my understanding.

>> Phaedra Ellis-Lamkins: What we're understanding is we're not doing anything but this agenda for the next several meetings.

>> Virginia Holtz: I'm really hopeful that the other elements are much simpler than ancillary bodies. But we still have to cover that C section.

>> Ed Rast: Brenda was next and Dan and then -- Brenda.

>> Brenda Otey: All I want to say is basically you're laying the foundation with the definition and so everything after that should be much easier because once we know who it's going to apply to we can decide who it's going to apply or how much of it is going to apply to different bodies. It may -- at this point we're laying the foundation and it will take off and be much quicker once we get that done.

>> Ed Rast: Dan Pulcrano and then Dan McFadden.

>> Dan Pulcrano: I'm going to speak against the motion. I don't think this process is working. If we continue going where we're going we're going to be here until 2010. And we were tasked by the City Council to get something done. I think the basic problem, I'm not saying this because I've also sat in on the chair staff meetings is that when the staff has the opportunity to have six people vet the document before it comes to the committee, the mayor's office looks at it, the City Manager looks at it, and the other departments. We don't have that as a committee. It comes to us, you know, the staff document comes to us, staff has an analysis of something, the item we passed comes back to us and it's just kind of ping ponged. I believe in order for us to make the kind of progress we make, we've got to do a couple of things. We've got to agree as a commission to do a whole-day meeting, eight hours, or we need to meet

weekly or have four-hour meetings to do this. Because there's going to have to be time. The other option is for us to either break into committees for subject areas, and have a couple, a few members work on one section, a few members work on another section to expedite it so it is vetted by a few members of our body before it comes here. It needs to be vetted by some of us, and work with staff to produce the document. Otherwise it's a staff-only document that's not going to reflect our perspective or have a drafting committee. That's another way. Even the chair and vice chair also don't have the opportunity to in any way have input on the draft before it comes here. None of us have input on this draft. And that's one of the big problems. We have to do it as 15 of us together. So we need to somehow create some kind of basis to have input into the draft.

>> Ed Rast: Dan McFadden and Phaedra.

>> Dan McFadden: I have two points. First I'd like to respond to Dan. First of all the City Manager, the mayor, nobody other than this little group looks at these documents. Secondly, this is not a staff document. We're going through and trying to get clarity here. The language in the models we have primarily, the joint proposal and the San Francisco ordinance, is so convoluted and so difficult, I've said it over and over again, that we have to get it to the point where it's clear before we can even assess what the impacts are. We're trying to get the first cut at it, that's what we're trying to do here. That's what this process is about. So I want to go back over this. I went over it so many times, you guys are going to do what you're going to do. The point I'd like to say is we have a study session with the council on November 30th. We have to prepare the staff report to give the council some sense of what it is you want to talk about and what we want to talk about. And so we're going to have to I think raise that on November 2nd, so there's enough lead time to get into that, and to pull that document together, as we have at least a two-week lead time on that. So that's my point.

>> Ed Rast: Other, Phaedra and then Bobbie.

>> Phaedra Ellis-Lamkins: I first want to address kind of a general feeling of the committee which is I think it is certainly fair to raise objections about how something goes to the document or even ask for clarity about why our change is happening what does it mean, is there suggestion about why we would change language. But the thing that I just want to be clear about is I think our role is not, I'm sure no one intends this to happen, our role is not one of working against the staff. And I want to just be very clear that I assume that everyone that works for the City of San José comes dedicated to make the world better and that they give their best and they're people we can be proud of. I want to be clear that when we ask questions or clarifications that are very appreciative, but is the process working? Which I think is a very fair question to ask. If we create something, somebody recreates, we go back to the same document, I think that's a fair question. I want to separate people from process and I want to make sure that we all don't do that. That's one issue for me. I think the second issue is, I'm not aware and Dan maybe you are, that the mayor's office and other folks are working on these documents. I think all of us are engaged in our own process. You talked about talking to attorneys outside of this meeting. I think we've talked to our own staff. We are all going through our own vetting process in the roles that we have before we come here to figure out do we bring to this group kind of the best representation of what exists for our group. And I think the motion, I think what you raised which is fair around the idea of increasing meetings or what does it look like, I think that's the next agenda item which is part of what we're going to talk about. Which is a good suggestion, it might make sense to have a whole-day meeting. We're not leaving the room until we get this much done. The motion was specific to do we not, the part that sometimes ticks us off, we've had the discussion a lot about should we break into committees, we seem to end up in the same place all the time. That's the process issue that we're raising, let's get through definitions, give ourselves a couple of weeks, let's commit to continuing. I think that's what the motion was about.

>> Ed Rast: Bobbie, you were next, Karl, Brenda and Dave.

>> Karl Hoffower: Karl Hoffower. When I first looked at this document, I thought it was great. You guys have a difficult time as we redo motions, and pull them back and argue about them and stuff. For me it gave clarity on the convoluted process the, I remember when we were arguing about this or not sure about that. I really appreciate this document here. But I do think that we do need to seriously think of an all-day meeting because I don't think we've moved far enough long.

>> Ed Rast: Brenda. And then --

>> Brenda Otey: I think that it's a about idea to think about having an all-day meeting and moving forward with that. I support the motion that's on the floor because I think instead of talking about how we do it, if we continue to talk about how we do things, we'll never get anything done because we won't be doing the things that we need to get done. So if we can move forward, continue to do, and not talk about how we're going to do it, I think we will be very successful in completing what we need to accomplish.

>> Ed Rast: Dave.

>> Dave Zenker: My comments are less about the motion and more about the climate that we're under. I'm getting really fatigued of kind of the unspoken trust issues that we seem to be having here. We have to all come to this meeting and every meeting with the understanding that everyone is operating under good faith. That the city staff is doing the best that they can, and that we're all doing the best that we can, and frankly if we're going to come to these meetings, not trusting each other, it's going to -- it is going to take until 2010, there is no doubt. Because we don't have a staff of resources available to us otherwise. And frankly, I'm not willing to put in weekend after weekend after weekend to get the work done, when we have a staff of very capable people here to do it for us. So I think we need to take the work that's being offered to us, definitely put our stamp on it, customize it, make it ours. But that the -- kind of the underlying trust issues that we seem to be having at some level here, about what is this really mean and what does that really mean is really bogging us down and I think we have to move forward with our intent, and then when it all wraps up into a nice package we have to all stand there and say, did this really turn out to be what we wanted it to be. So I just got to call it the way I see it. I'm a really direct guy and the trust issues are getting extremely tiring for me.

>> Ed Rast: Dan.

>> I just don't want my remarks to be miss interpreted as a lack of respect for the staff. That wasn't my intent at all. I agree with you Dave. Why don't trust members of this body to work with staff.

>> Ken Podgorsek: Mr. Chair, may I call the question?

>> Ed Rast: Ken Podgorsek.

>> Ken Podgorsek: I'd like to call the question please.

>> Ed Rast: Read the motion.

>> The Clerk: The motion was to move on with the work plan as we've done so in previous meetings and extend our review period. And then it was subphrased, continue working without discussing process.

>> Ed Rast: So everybody understands the motion. All in favor? Aye. All opposed? Any abstentions? All right. You abstain? One abstention. Dan Dan Pulcrano abstained.

>> How can you abstain? You either go --

>> Dan Pulcrano: I'll go no.

>> Ed Rast: He voted no. Okay, item number -- number VII. Consider increasing meeting frequency. Let me make a comment on this. We have on November 30th a meeting with the City Council, a study session. And at this point in time, we don't have an awful lot to present to them. And I think it's incumbent upon the task force that we put some time and effort into getting through a number of these sessions, and I'm sorry, sections, that we do that. And the only way I can see that we'll be able to do that is have

additional meetings or increase the time, or both. Comment, Bobbie.

>> Bobbie Fischler. If you look at the time taken by the City of San Francisco, City of Milpitas, many of those that we have looked at, this is not a rapid process. It routinely takes even up to a year. So that I certainly would not be disturbed if we don't have a conclusion even by, say, the end of the year.

>> Ed Rast: I don't think I agree that we probably will not have a conclusion. As a matter of fact, part of the discussion eventually will be that our work at some point in time will not be done and that we may need to talk about the idea of a -- of permanent task force to continue on like San Francisco and other places. But I brief this is our seventh meeting, lets see, I think it's the seventh meeting we've had since June. And if you look at where we are, we're not even -- about three pages in. And that, you know, are you comfortable -- I'm not comfortable going into the November meeting only doing less than maybe -- even if we get through first section, that's only 1/7th of what we've done. Dan.

>> Judy was up first.

>> Judy Nadler: Judy Nadler. I don't know if this is like if you have a big house, if you know you have a big house, you'll fill it. If we don't have a lot of time we'll take shortcuts. I hope this is not what's happening here. Because I believe there is a crisis in confidence in San José. I think that the public trust has been broken. And that the purpose of this group which is a huge task, and a very important one, is to do everything we can to create the kind of sunshine ordinance that would restore the public's confidence, that would allow the public full access as they should have, to the public's business. So if it means that it is slow-moving or deliberative, I believe that it will at least be done with, I hope, full input of everyone around the table who have been appointed to represent the community. And this is a one-shot deal. We will not actually -- the city will not and the public will not give the city another chance to do this. And with all due respect to the work that was done by the blue ribbon task force, I think they had a deadline, and they sort of just scraped the top and didn't actually get probably as much into the ethics issues as they could have had they not been so constrained. So I would just urge that we move ahead. I think Dave made an excellent point, that we actually really have to leave whatever notions we have or feelings kind of at the door before we walk in and say, we're here to roll up our sleeves, we're here to listen carefully, to be good listeners, to be contributing members of the group, and to recommit ourselves to the outcome. And I think we are getting very bogged down in the -- in the meeting part of things, and I feel that way, fatigued myself. But I'm really looking at the bigger -- I'm trying to look at the bigger picture and what the benefit will be. And for the citizens of San José, away amount of time we've put in will be more than worth it if we come up with a really good document that gives them the kind of sunshine they deserve.

>> Ed Rast: Ken Podgorsek.

>> Ken Podgorsek: I want to echo that, I want to echo Judy's comments. I certainly don't want to, you know, spend the next four years of my life doing this. I didn't, you know, I didn't volunteer to do this with the UNSEC so that I'd be here for you know, long periods of time. But I also didn't volunteer to do half of the job. I volunteered to do the whole job, to work to put together a good document that will -- that will meet the needs for the citizens of San José for many years, for many years to come. That will perhaps be somewhat the case, we're going to have to ask the City Council for an extension, I say we do that. But I do want to make a point and this is related to our meetings. I think we would definitely benefit, I think we'd get a lot done if we actually in as much as I don't want to do this either, we actually held one all-day Saturday meeting. And the reason why, I looked at today, we get right into the -- you know, we really -- we're slow to start. At all of our meetings. We're just slow to start. We get right into getting our momentum going and then we have to shut our meeting down. I think that if we actually just sat down and said you know what, we're going to work from 8:00 to 5:00 on Saturday, about 9:00 to 5:00 or 9:00 to 6:00 on Saturday, I think we would focus on use the momentum, move through a lot of sections. I don't want to

give up my Saturdays. Saturdays are really crucial to me. But you know, I also don't want to be here in 2008. And I think that if -- I think if we were willing to give that a -- a good try, I think we'd accomplish a lot and I think we'd get a lot further work done.

>> Ed Rast: Phaedra and then --

>> Phaedra Ellis-Lamkins: I'm doing a Saturday after the election is my only request. And before November 30th. I do want to, though, so I think we're agreeing that I think a better product even if we don't have a full product before the council meeting is important. I do think though that Dave really brings up a good opinion of trust. I've made the observation myself and acted on it. We don't have to act on it today but I have huge concerns about people talking to each other between meetings, asking everything from who you're going to vote for for chair to meeting talking to people ahead of time to talking to council outside of these meetings. I have an issue on trust because I'm not clear on what's appropriate and what's not. Sometimes it feels inappropriate so I would at least love to figure out some conversation because I thought we did that in the very beginning, about what was appropriate or what's not. But I do think that would move us forward and it doesn't have to happen in the next meeting but I think certainly we're all acting on that, at least I am.

>> Ed Rast: Judy Nadler.

>> Judy Nadler: I also wanted to ask a question about our attendance policy. I feel that we're somewhat losing out on an important perspective with the chair representative not being here. And so I'm not sure what all that's about or how, did I miss something?

>> Ed Rast: Sheila, my understand, when we asked about it at the last chairs meeting, we had a number of people that missed two meetings but the rescheduled meeting was not counted and sickness does not count. So are we -- is anybody close to three? At this point three --

>> Not as far as I know. I will have to check the status.

>> Ed Rast: Couple of people were right at 2 but nobody was at three.

>> Also it would be helpful, I usually get notices why you can't attend. If you tell me why you can't attend so I can apply the policy evenly.

>> Ed Rast: Right. I think what we talked about earlier is the idea if you cannot attend, if you review the tapes so you come into it to continue the conversation even though you missed it, I think that would be useful. Dan McFadden.

>> Dan McFadden: I just wanted to comment why I think it was important that we talk about the 30th at the next meeting because we need to get something together as I said. But if you recall, the ordinance was set in and it's been our focus and we've firmed it up. But we really didn't have the discussion with the council, what do they think of a new ordinance. We'll have a new mayor and four councilpeople. This is central in all campaigns. Rather than focus on the document I think it might be helpful to step back and talk with the council, because I think we'll have new members and old members there, as I say the new mayor, and talk about you know, what's the process here, ahead of us, and what's the product, also. What do they expect from us?

>> Ed Rast: You got a good point. I think if I remember correctly, all the other ordinances were done in about 18 months to three years, which is considerably longer and I agree with the earlier comments that we need to make a quality product, so on, so forth. I'm sorry. Judy. You go to go, okay, thank you. So do we have a consensus that we need to go to a longer meeting and we'll do it on a Saturday? Is there a date? I'm sorry.

>> Phaedra Ellis-Lamkins: I didn't know that we were consenting that we were going to make these meetings longer. I thought we were saying that do you mean the period of time might be longer or these meetings time wise are becoming longer?

>> Ken Podgorsek: Consensus on holding a Saturday sort of supermeeting to accomplish more.

>> Phaedra Ellis-Lamkins: After the election.

>> Ken Podgorsek: After the election.

>> Ed Rast:.

>> Ed Rast: Dan, what --

>> I was going to interject, Sheila tucker. Should you decide to have a Saturday meeting, I do have room availability, should you talk about that, I have some dates that are available here.

>> Ed Rast: What are the -- Dan go ahead.

>> Dan McFadden: My only thought, if you are going to a Saturday meeting, you need a facilitator. We need some lead time only.

>> Bobbie Fischler: Bobbie Fischler. I don't think with a facilitator we were very productive. I think we do quite well with a group, certainly now that we've gotten to know one another.

>> Ed Rast: Susan?

>> Susan Goldberg: If we are trying to pick a date now, let's do it. It's already overtime.

>> Ed Rast: Sheila is do you have dates?

>> After November 7th? We have November 11th. The 10th is a holiday, I want to be sure. November 18th. December 2nd and December 16th. That's what's available through the end of the year.

>> Ed Rast: So in November it's the 11th or the 18th.

>> Phaedra Ellis-Lamkins: Could I ask a process question about the date? I do think I agree with Judy that we should be thoughtful, but I do think it might make sense to do something before November 30th if possible. Because I think in addition to the ordinance we should probably have at least some answers to the questions, because we don't just say, we ignored your questions, thanks for giving us this proposal, I'd at least have time to have discussion of the substance other than stuff we created.

>> Ken Podgorsek: This is an additional meeting, not in replacement?

>> Ed Rast: Correct.

>> I could do either.

>> Ed Rast: The 11th or 18th of November.

>> From staff perspective the 18th would follow a Thursday meeting. And so in terms of turning around work product it would be far easier for staff to do that on the week that we already have a meeting as opposed to the next week. Because we are constantly working on work products so I'll throw that out there.

>> You'd rather do the 11th or the 18th?

>> Yes. The other thought is, the 11th is a holiday weekend.

>> Ed Rast: If we have a meeting on the 18th, Dan, does that give staff sufficient time on anything we do that day for the 30th?

>> It would be very tight. But this is a study session, not a formal council meeting. We would have to have some type of report. I think we could have something out. We'd have to just get something out the following Monday and --

>> Ed Rast: Okay.

>> Dan McFadden: We would be within that ten-day kind of parameter.

>> Ken Podgorsek: And I asked this other question.

>> Ed Rast: Ken Podgorsek.

>> Ken Podgorsek: Not a problem to you but the 18th leads you into a three-day week. The next week is a three-day week. Is that going to make your job harder?

>> Dan McFadden: Yes, it will, but I don't see much of an alternative. I think it's important that you have a

discussion and we draft off of that a little bit and provide as current information as we can to the council.

>> Ed Rast: All right. So do we have a motion or -- consensus?

>> Ken Podgorsek: I'll move it. I move that we plan an all-day meeting, for Saturday, November the 18th, starting at 9:00 a.m.

>> Ed Rast: 9:00 a.m. to 5:00 p.m. with a break for lunch?

>> Ken Podgorsek: With a break obviously for lunch.

>> Second.

>> Ed Rast: Okay, discussion, call for the question?

>> Margie Matthews: I cannot make it.

>> Ed Rast: Marjorie cannot make it. Phaedra.

>> Phaedra Ellis-Lamkins: I apologize. I'm on a panel at the convention center. I'll miss part of it.

>> Call the question.

>> Ed Rast: All in favor, all opposed, passed. We've now scheduled a Saturday meeting. Okay. Let's see where we are. Public comment. Is there any public comment? There's no public comment. All right, so --

>> Ken Podgorsek: I move that we adjourn.

>> Ed Rast: Second? All in favor?

>> I second.

>> Ed Rast: All opposed? All right, we are adjourned. Why do you get all the motions?