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

>> Ed Rast: Good morning. If everybody would have a seat. If you haven't signed in, please sign in. All speakers, please fill out a speaker card if you would like to speak. Each speaker, if you talk after each agenda item. And what we'd like to do then is start the meeting. We'll call to order the Sunshine Reform Task Force for Saturday, November 18th, 2006. Special meeting. First item is comments by our mayor-elect Chuck Reed.
>> Councilmember Reed: That's it, no warmup? What happened to the opening act? Saturday morning at 9:00. Need an opening act. Well again, I'm sitting here, I've gotten one of my wishes as a new mayor. I'm going to be Dan Pulcrano for a day. Dan has volunteered to take me out night-clubbing so I can see downtown after 10:00 in person. That will be my day to be Dan Pulcrano. Well, first I want to thank the task force and all the people on the staff that have worked on it. I know it's a long tough process to develop something new. And on something that we don't necessarily all agree upon. And it covers so much of what's important to city business. And I know you've been at it for a long time and I don't think you're quite that -- it's an all-day session today, maybe you'll wrap it up. From my perspective, I'd like to, you know, see your work completed as soon as can you reasonably get it done. It's important to the city. The entire City Council is conceptually behind the work you're doing. We'll work out the details somehow to your satisfaction and to the council's satisfaction. But it is important to try to get it done. And I haven't looked at your entire work plan and everything on your work plan. But I know that there's a lot yet that you haven't taken up. I think there's a lot of momentum now for sunshine and open government. In part, as a result of your work and part as a result of the election and part as a result of the council's interest in it. So I'm hoping that we can take this up, the topic, not just specifically what you're doing, but open government, and an entire agenda of things that need to be done, early in the year. In January, our first council meeting is January 9th. And I hope to be able to present to the council a series of reform proposals for the council to begin considering in January, and it would be great if you have weighed in at least at a policy level on all of the things that you've been look at. And there's a difference in my mind between weighing in at the policy level and knowing all the details and language and everything of an ordinance. There are things that you have an interest in. That would be great if you could express that interest, recommendation one way or the other, even if we don't have language, even if we don't have a policy, because part of what the council needs to do is to make the policy decisions and direct the staff to go begin the implementation process. And if there are things that you're looking at, I know you have a long list of things that have been referred to this task force. If you think there are things that are bad ideas, you should say so. If you think they're good ideas, you should say so. Then there's the category of drafting the ordinance work. And I think it can all happen at the same time, or in parallel. Because what I don't want to have to do is sort of delay the council moving on these kinds of things for months and months on end. I don't know how that fits your work plan. But I know if we have to draft every detail of every piece of the ordinance, it's going to take you a while. And unfortunately I haven't been able to attend any of your meetings because I got kind of distracted by the election. Pete furman has been here though. The devil is in the details, because I've heard of some of the details that you guys have had to go into with the ordinance, and I guess my apologies on behalf of the council for sending you into this project. Because I know it's been a lot of work and a lot of difficulty. But I do greatly appreciate the effort. I served on a lot of task forces over the years and I know how much work and commitment it is. Here it is Saturday morning, you could be home washing your socks or something. You could be here, that's a great thing. A lot of you I've worked with for years. I know your commitment to the city, to public service and to open government. We will make it happen. We may not know all the answers early on in Jan You may not know all the answers. There are a couple of ideas I have to help smooth that problem, is first, I don't know that in January, is the end of the work. We may need to have a reunion of this committee or

something, in six months or some other method of looking at the work in six months or a year or some time period. And I'd like for you guys to think about that. I think one of the items you have on your list is whether or not to have some sort of a commission or something to help on the enforcement side. And what I've discovered is, as hard as it is to draft the ordinance, it's not the most important part. The most important part is the implementation. And following the ordinance, you've discovered in some cities they have an ordinance but they don't have a practice that matches the ordinance. I know even in my own experience on the City Council, we put a lot of work into developing public records act protocol and a training program. But the implementation is spotty. So some implementation, enforcement work, I know needs to be done. And maybe instead of trying to figure out all of the answers 100%, you can consider doing the best job you can and revisit it six months hence and see how it really works. I know you've said this is not practical in the real world, it's too expensive. Maybe some of those issues will get sorted out over time. Maybe that's the way you should consider, bridging the gap on some of the issues, you just can't get implemented. With that I'd be happy to answer specific questions. I don't want to take up too much of your workday. I know have you a lot to do. Thanks for being invited.
>> Virginia Holtz: Virginia Holtz. I'm quite relieved to hear that you're not interested in the actual language, the text being used, that you're more interested in policy and the direct -- you know, coming out of this committee. Because I think that we've been bogged down in trying to get the exact language that would be in an ordinance. And it's slowed us down tremendously. So I'm looking forward to today's work, where we can develop solid policies in the recommendations to present to the council on the 30th.
>> Brenda Otey: I would like to know what your ideas are specific, the things have you in mind, or are those still the same things contained in the memos that we received from you earlier, or do you have any new ways of looking at the implementation of the sunshine ordinance?
>> Councilmember Reed: Well, mine are pretty much in the memo, the Reed reforms memo that I did. I have come up with a couple of things to add to that list along the way, but they're not directly related to the sunshine task force's work. The one thing I guess I don't have my memo, is whether or not there should be an enforcement mechanism, a commission or something. Because I know right now it is sometimes just hit a wall, where the city says hey, we're done, we're giving you all we're giving you, we don't have to do it. And I don't know if we need a commission or how we deal with, well, how do you decide if the city is right or wrong on that?
>> Susan Goldberg: Chuck, I think one of of the Reed reforms 23rd is that you support the model ordinance that was drafted by the Mercury News, the League of Women Voters and a number of folks here on neighborhood groups. Were there certain things on that ordinance that really struck you? Because that's a pretty sweeping ordinance. It takes a lot of what's going on in San Francisco and in some cases goes a little further, in some cases is model after San Francisco and Oakland. Were there certain concepts in there that you thought were especially important?
>> Councilmember Reed: I guess the concept is, you've got the Brown Act, you've got the public records act and those set the minimum standards. My concept is, we don't push to the minimum, we push towards the maximum. I don't know what the maximum is but that's the basic concept of the ordinance. In real implementation it might not work that well. I'm interested in pushing not just to do the minimum. We did it, we complied with the Brown Act or the public records act. That's the basic concept I thought was good.
>> Susan Goldberg: Thank you.
>> I have two questions. One is, there's been a series of reform proposals which are outside the scope of the ordinance, and then there's the ordinance, both of which have been referred to. Do you feel our priorities should be getting an ordinance, or at least the policy items that would comprise an

ordinance? Should that be our priority? Or should we be looking at the other council referrals as well?
>> Councilmember Reed: Well, we need a sunshine ordinance, and that is the task, number one, of this task force. So that is just something has to be done. But there's a lot of other things that you may be able to deal with, within the time frame. And I also accept the fact that there may be things you don't want to deal with, can't deal with, and those need to be kicked back to the council, saying we didn't have time or we haven't had the ability to deal with them. I think that's acceptable. Because the council can then take it up in some other way. You did get everything including the kitchen sink referred to you.
>> And the second question I had was, in reviewing the Reed reforms, the center portion which were under the title sunshine, two items appeared to be political reform, the one was lobbying and the other was campaign finance related. And in two of the items appeared to have been handled by the council already. And essentially prevote disclosure items that came up in the -- in light of Norcal. So sit your feeling that those two items in the Reed reforms have already been handled, the pre-vote disclosures, and then the two political reform items, would you be comfortable with those being referred to the elections commission, or back to the council?
>> Councilmember Reed: Yeah, I think you can do that. That's reasonable. I think there's additional work to do in those areas, but it's beyond the scope of in committee.
>> Dave Zenker: Dave Zenker. I rent one of the neighborhood associations. Seeing we have a full day session here, and on the 30th of November, you said you would be interested in presenting some package of reforms on January the 9th, what would be the minimum amount of acceptable work you would want to see from our group by then? Given kind of the time we have left, and what's -- what we have remaining on the calendar, I think? I'd be really interested in getting down to brass tacks with you to know really what you would like to see us try to wrap up. Because we still have such a huge amount of work left. That's what most of us feel, at least. We're really mired in the details, I think. And one of our goals is to kind of back up a little bit and take a bigger picture look at what's left. I think it would really help us to start the day out today to hear from you, get a clearer picture, you know, really where we can focus, to get the new year started off with something that you can work with.
>> Councilmember Reed: I don't know that I can answer that question very well, to see what's in the process, see what's in your work plan. I haven't had the time to study that. I'm not 100% certain exactly the sequence and timing of bringing these things to the council. Because we're not just going to put them on the council agenda on Friday and vote on them on Tuesday. That's not a good practice. [laughter]
>> Councilmember Reed: The council needs to have some time and some process of working with them. And the study session is, with the council is a piece of that. So the council gets comfortable with understanding the work that you've done. But I don't think I'm ready to really -- prepared to answer your question.
>> Dave Zenker: So then a more specific question would be, what do you hope to propose or implement, bring forward on the 9th? Will it specifically be the Reed reforms or will it be something coming from this group?
>> Councilmember Reed: That will in part depend on where you are in the process. But what I don't want to preclude the work that you've done or, you know, blow past it. I want to build on it. And so that's part of trying to figure out how to sequence everything that needs to be done. Because there's other things that are on my agenda that I want to put on the council agenda, that aren't part of this committee's work. So the sequencing of that I still don't know yet.
>> Dan McFadden: Dan McFadden, City Manager's office. I'm glad to hear that, that's the mark of a good project here. We're trying to be realistic. I'm a little more positive on the work we've done so far. I think the public meetings and the closed meetings and the public information and outreach sections are together,

we've got them down certainly we have to go back through and clarify something, we spent a lot of time on definitions but I think that's been productive. And I think we may be able to surprise ourselves and bring something in in January on those three sections. That's the Brown Act material and that's the public outreach and information, and I think we probably could do something, and I think it would be very good if we could. On the public records, there's a big gap between the word and the act there. And that's very problematic for us. There's a lot of cost involved, there's a lot of change involved. And for example, we have 30,000 boxes, cartons in a warehouse. We have sheets like this with the inventory on them. We have 15 pallets of documents that aren't identified. Most of this is manual stuff that we have to go through. We're a large, old city. So we have -- we don't have a records manager on staff. To get this all together, to get the infrastructure to be able to deliver on whatever we write in public records is going to be a major effort. And some people may decide that they want swimming pools open more than they want the perfect record systems, I don't know. That's your decision. But it's going to take us a while. And we're going to have to work on the public records, just on the practical aspects of that. Because it does have such an impact. It has a tremendous impact on Public Safety. It broadens the city's liability. There's direct and indirect costs that are significant based on the proposal that was submitted by the mercury and the joint proposal as we know it. So that's going to take some real sort of through. The other three sections that we have, you know, in front of us right now, I think we can move pretty readily on those.
>> Councilmember Reed: I served on the blue ribbon task force two or three years ago, and we went through lots and lots of stuff like you're doing. And we did send it back to the council piecemeal. As we dealt with it, comfortable with it, we moved it on to the council. And that served the council better because that's just easier than getting a gigantic package and having to do it all at once. To the extent that you can get a compartmentalized grouping, having the council deal with it that way, that would be okay.
>> Ed Rast: Administrative issue, please make sure your cell phones are off. It interferes with the audio equipment. Please make sure you announce your name before you speak. Bob Brownstein.
>> First, I'm very glad Chuck that you suggest we do not draft an entire ordinance. I think that is what has slowed this process down. In terms of making policy recommendations, which would then be drafted at some future time, am I correct that what you and I think the rest of the council is to do is to indicate what we think are the priority issues that should be in an ordinance, and the policy direction that we think should be followed in the drafting of an ordinance?
>> Councilmember Reed: Yeah, I think that's a good way to do it. But I know the devil is in the details. And the language of the ordinance is important. And you've done a lot of work on that. And I don't want to lose that work on the issues where you've already been through, you know, some of the wordsmithing.
>> I wasn't implying to throw away what we have painstakingly --
>> Councilmember Reed: Yeah.
>> Margie Matthews: This is Margie Matthews. Maybe we need to go through the list of things that have been referred to us and do all the easy ones and get those off the table. And then we can focus on the three or four big issues that we've really been grappling with, which is the way to reduce this, maybe, so we can focus on the big policy matters.
>> Ed Rast: Ed Rast. I'm sorry. Judy, did you -- I missed you.
>> Judy Nadler: Judy Nadler representing the Markkula center for applied ethics. My question to you is, when you are finished, and I'm not sure that we will ever be finished in a sense that this is an ongoing task that requires, in my judgment, reflection and renewal, on an ongoing basis, that once you seal the -- sign the last little bit of it, it's time to look again at what's transpired and what the new issues are. And how we can make whatever comes to the council and it's adopted by the council better. So is it your sense

that there will be some part of your priority, or in your new administration, to keep focused on this, and have this reflection and renewal and strengthening of the public's confidence part of one of your priorities?
>> Councilmember Reed: Yes, it will be. We have a lot of time, energy and investment in this process. We have a lot of people that are committed to it. I think the council's fully committed to it, and I am.
>> Judy Nadler: And I say that because my concern is that the public generally is not satisfied or sometimes finds it hard to believe that change happens, or that reform actually can occur. And so just to say the committee has completed its work, the council's adopted it, is not enough. It is in the implementation, and it is also in an ongoing conversation and renewing that commitment on an ongoing basis. I think that will help restore the public's confidence in San José.
>> Councilmember Reed: I agree with that assessment.
>> Ed Rast: Ed Rast. Chuck, in many of the other cities when they drafted ordinances what they ended up doing was putting together a almost unreadable, very legalistic type ordinance. And one of the factors that's kind of contributed to the delay or the maybe not moving as fast as we can as other people have thought we should, is that we're trying to write an ordinance that is readable, to the average public, and is understandable without having to consult an attorney. And also, the time frame that most of the other cities did to put their basic legalistic mostly unreadable ordinance together was 18 months to three years.
>> Councilmember Reed: That sound like a nightmare scenario for anybody who is on a task force, right?
>> Ed Rast: There is no question. Originally, when we talked, the concept was, I think I believe we would have it done in January, the session we had the other day was talking probably by march to get most of it done. And to go back to the policy level that will speak the task through. In talking with the task force, two areas, one of which was, this is not a one-time event and that's partly what slowed us down. We want to make sure the words are right, so that when it's sent forward it wouldn't be criticized. And we want to look at the unintended consequences, in light of the low staffing levels of San José compared to other cities, and the low taxing level. The key to this is an ongoing commission because that will be able to do changes in the implementation and especially enforcement. The way the city charter is written, the City Attorney is probably best referred to as the City Council attorney, because by charter, has no responsibility for public or the municipal corporation. So there's no enforcement. And the District Attorney, which in most other counties has an enforcement for the Brown Act, has not taken an active role in enforcing it. So in effect, we have no enforcement. So if you put together an ordinance or any law with no enforcement, it doesn't get done, except for the goodwill of the people involved in it. And sometimes in government, some of the elected officials don't particularly possess goodwill towards trying to conform to the law. So I guess the task force, I would look at, I would personally like to see some idea from yourself and the council, of what the ongoing side of the enforcement and commission is almost all other cities have a task force, a commission, something that is there for the public to talk to, and get enforcement on this particular area, and also, it has a tendency to have the city government elected officials comply with the task force.
>> Councilmember Reed: Well, I'm interested in what works. I have no experience with any other cities, with their task forces or commissions or anything. I think that's important. Because implementation is the key. And usually the weak link in a lot of what we do, is we're really good at focusing on the crisis of the day, fixing it and then moving on to the next crisis of the day. And this is something that I agree has to be ongoing. And whether or not that's a commission to do it, or not, I'm interested in hearing, you know, whatever work that you guys have done, figure it out, and make a recommendation to the council.

>> Ed Rast: Judy Nadler.
>> Judy Nadler: Judy Nadler. On the implementation, if I can make just two pitches for things that I think might really help us. I'm a little bit stunned to hear that there is no records management person. There is no records management person.
>> Councilmember Reed: There's a lot of management.
>> Judy Nadler: Yes.
>> Councilmember Reed: And a lot of records.
>> Judy Nadler: So what that tells me is that actually, this may not be in the past, this may not have been a priority of the city. And if it is to be a priority, it will have to be budgeted so that that priority can be implemented. So that would be my first suggestion. And then we had a little discussion this -- at our last meeting about the fact that the Planning Commission meetings, which are really critical, which -- where most people interact with the city in terms of actions, many of them -- many more go to Planning Commission, perhaps, than City Council meetings, are not filmed, taped, nor are any minutes taken. That, I think, the consensus of this group is that that's pretty appalling, because the public does not have an opportunity to view those, to see what happened, and to really have a public record of that. So my other recommendation on the fine points on the implementation, would be to have it be a priority to, at the very least, have minutes available, and if you can't do the filming immediately, at least an audiotape available or audio streaming. Because I think those are the meetings that most people can relate to and that's where the neighborhood groups are trying to keep up with what's happening. And by the time then the decision is made, it's actually out of people's hands. So those are just sort of two practical things that I wanted to toss in while we had you here.
>> Councilmember Reed: Okay, thanks.
>> Ed Rast: Dan Pulcrano.
>> Dan Pulcrano: Just a quick question, if we pass things to the council in January but we feel there are things that need to be done in terms of the language, can we pass a draft, but ask that it be come back after council feedback so we can do the final polishing of the ordinance?
>> Councilmember Reed: If you are willing to continue serving, that's a good idea. But I don't want to keep you in bondage for years. As that's occasionally happened. Because I think we promised you when we set up this task force that it would be a short-life task force. I'm going to try to make that work for you.
>> Ed Rast: Margie.
>> Margie Matthews: Yes, Margie Matthews. To capsulize what my feelings are, being a nimble city, cutting red tape, and you know, being able to act and respond to our constituents quickly, so that's the struggle. I mean, that in a nutshell for me is what, you know, what we're all struggling with and I know the council will struggle with that as well. So it's a tough call on every single item, it's a tough call. Because I'm always thinking about how much is this going to cost, how long is it going to delay things and how frustrated are the people we're trying to serve be with the process that has a lot of barriers. If I could capsulize our struggle, that's where it would be.
>> Councilmember Reed: That's part of why it's important to take a review in six months or a year or some reasonable time period. Because you're really not knowing how things will work until you have a time to implement them.
>> Dan McFadden: Dan McFadden, City Manager's office. The public records act, separate legislation, the 54 pages of state code is very complex. And we do carry out the records act with 57 people, who are part-time as an add-on job to handle records in the departments. We're very decentralized. So it does take a lot to get down and to make this program effectively implemented. That's what I was trying to say. We did have a full-time records person but they were cut from the budget I think two, three years

ago. So we do have to put some infrastructure together. Thank you.
>> Councilmember Reed: Well, and just to tie onto that, you will see the City Manager's memo which ruined my morning this morning, which was the five-year forecast and the budget projections of budget shortfalls as far as the eye can see. So budget is always going to be an issue.
>> Ed Rast: Any additional comments? All right. Thank you very much.
>> Councilmember Reed: Okay. Thank you all. Keep up the good work.
>> Ed Rast: Appreciate you coming.
>> Councilmember Reed: I appreciate it. [applause]
>> Ed Rast: Next item on the agenda is chair's comments. One of my suggestions to the task force is for each time we have a meeting or agenda items is have one or more of the task force members lead that discuss, based on their interest or knowledge of that particular area. And that way, it would help move it along a little faster. Also that we would try as we have discussed and mayor elect Reed has discussed, stay at the policy level, and refer the information over to our two attorneys, and in turn, have them come back with draft language. And I think by doing that, we'll move faster through the material. I think Dan McFadden has indicated what we've been work on, even though it's only 1/7th of the documents, probably from the work point of view, it's a third of the work, maybe 40% of it. I think as we get through the meeting and we get through the closed session, we'll move a little bit slower, until we hit the public records and then we'll slow up a little bit. What we'll do now is take a -- what we'll do is review, we'll do a review of the meeting minutes -- meeting materials and then move on. Is there any comments from the task force? All right, fine. So our next, staff will review the meeting materials. And if everybody wants to get a bottle of water or something to eat, we'll get through these. Since we're having a long session feel free to take a bathroom break and we'll keep moving through it. Staff, Sheila Turk.
>> Sheila tucker City Manager's office. There is a few new documents over there. Obviously the amended agenda for today, there is a document that outlines the draft definitions for public meetings that our two legal counsels have prepared for today's discussion on item 5. I do hope that we all got the e-mail yesterday asking to you bring in your public meeting material information back. I did not want to mass-produce that stack. I did make a few extra copies, that includes the document A, public reform proposals related to public meetings and the like. There is also a package over there of closed session material. And that is for the time-certain discussion at 1:00 p.m. this afternoon. I did bring packages of material for public information to the -- in the event that we did get to that item on the agenda. I did not put them out. If we do get there I will happily distribute those. But I did want to keep those for the actual discussion so I didn't have to bring them back. And then finally, I do want to announce the study session binders are available over here in the box. So sometime today before you leave, you should please feel free to pick up your binder, in the box over here in the check-in table. We will not see you again until November the 30th. I'm sure we'll do some correspondence in the matter before then. But I wanted you to all get your binder. Those were released yesterday. And all that information is also linked and online for the study session. Is there any questions?
>> Ed Rast: All right, so the next agenda item is going to be discussion, the 22 council reform referrals. Sheila --
>> Sheila Tucker. This item would correspond to the implementation matrix that was distributed on Thursday, of the status of those reform materials. This was reagendized, regarding staff implementation of such. I believe this was an issue that Phaedra brought up at length on a couple of the reforms. If there is no additional comments, again, this is a pilot program. Staff is proceeding on a six-month pilot to implement these projects as described in that matrix. To the extent we discuss those today, the status of those items, there will be an opportunity for further task force input.

>> Ed Rast: Bob Brownstein.
>> Bob Brownstein: Bob Brownstein. I'd like to specifically comment about two of the works in progress, which are both related to the same issue, and that is, how the city handles very large expenditure items which are correctly defined as items of significant public interest. That's public information reforms number 4 and numbers -- and number 11. There are two kinds of problems that I see with the direction the city's going in. One, particularly in the case of public subsidies, where there can be a very large amount of public expenditure for something that is not easily defined in terms of the pay back. In other words, the city spending $2 million to buy fire trucks, it's easier to understand, you're getting fire trucks. But when the city's giving $2 million to the grand prix, it is harder to evaluate that kind of expenditure. In the latter case, I would argue the public really needs more time to evaluate what is going on in the issue. And the A time that makes sense for a large expenditure for a standard contract service or purchase may not be sufficient. And I say that, working for an organization that actually has staff, and has the capacity to evaluate a city -- with paid personnel to look at a city report that deals with a proposal to make an expenditure subsidy, and we would have trouble doing a full analysis and be able to get back and talk to councilmembers, particularly if we're trying to get somebody to get a memo out days before a meeting, if there's only two weeks to look at something like this. So first point is, shouldn't there be, for those -- that specific kind of expenditure, the subsidy type of expenditure, which is more esoteric, unusual, different and more complex, more time for the public to get a chance to get a look at it. The second problem is that the way that the city staff that is has tried to respond to concerns about the public and the council, by putting together a format which requires that alternatives be examined and the explanation of why alternatives are being put forward, and also says there will be an analysis that looks at costs and benefits and an analysis that looks at the relationship of the proposal to the City's existing policies. But there is no systematic sense, at least minimum systematic set that the public will know it will always get when one of these proposals comes forward. There is a difference between giving a subsidy to adobe and a subsidy to the grand prix. There is always a basic set that the public should always get. That you will know that you always get this in every report and every analysis.
>> Ed Rast: Do you have a specific proposal?
>> Bob Brownstein: Yes I do. I think the minimum information that the public should get, should be in three categories. The first category is cost benefit analysis. And that would include net tax revenues, that means how much taxes you're going to get and how much taxes you're going to lose if this proposal comes forward. The fiscal opportunity cost. That is, what could the funds that are going for this project be used for if you weren't spending it on the project. And that depends on the source of the money. I mean, if it's redevelopment money, it couldn't be used for city operating programs, and people need to know that, so there isn't a debate, why aren't we spending this money on libraries because it couldn't be spent on libraries. As a standard part of the report, there should be a statement on the impact on city services. If this subsidy is going to require that 20 police officers be working every week to take care of this subsidized project, the public should know it on if front end. And finally, third impact is impact on neighborhoods. If there are neighborhoods that are going to be impacted in terms of noise, in terms of transportation, in terms of people moving through the neighborhood at late hours of the night or other kinds of impacts, that ought to be a standard kind of category in the report. Second, broad category, economic effects. We should know what the net job impact is of a subsidized project. Is it going to be positive, is it going to be negative? And net, of course means you calculate the jobs gained and subtract the jobs lost. If you take out a private business to put something else in, jobs are going to be lost, and that net information should be available. Second economic effect, net housing impact. Are you taking out housing that could be -- help meet the City's housing needs? The city has had a history of roofing entire

low-income housing neighborhoods for other projects. And what is going to be the effect on housing demand if the project is brought forward. And third, accountability. Every one of these projects should have a statement indicating what is the future schedule of reports that will be brought back to the public indicating whether or not the project is meeting its goals, and what will be the options available to the city if the project does not meet its goals. If we're going to subsidize the Hayes mansion, at the front end the public should know, what happens if this outfit can't do what we think it's going to do, is the city going to be holding the bag, are the investors going to be holding the bag? The decision should not be the day after the city says, we can't do what we proposed to do, it should be at the front end before the check is signed. I propose that is the minimum set of information available to the public probably 30 days early for a major subsidized project. I recognize this is a major proposal, not that we would decide on it today but perhaps we could agendize it for one of our subsequent meetings.
>> Ed Rast: Dave Zenker.
>> Dave Zenker: Dave Zenker. It seems to me one item -- it looks like we've got three items on the list of which the task force is specifically interested in, public information number 4, number 11 and number 10. Why not make a motion to have those -- or make a recommendation to the City Council, make a recommendation to the city staff, whatever, make a motion, that those three items be brought back to the task force, and we develop them here. As opposed to us trying to develop them right now. So under another meeting, whether we get it done today, really one of them, the calendaring thing is done. But it's not reflected on this list. And we just do that.
>> That's a good idea. I think the chair probably has the power to do it without a motion.
>> Ed Rast: Yes --
>> Dave Zenker: I'm going to make a motion. I'd like to make a motion that public information reform number 4, public information reform number 10 --
>> Ed Rast: Before you make a motion may I make a suggestion?
>> Dave Zenker: Sure.
>> Ed Rast: That we walk through by number, go through, see if there's anything else anybody wants to, then go back and make a motion. Especially Brownstein's proposal is very complex. We haven't seen it before. We probably need to agendize it and come back and take a look at it. I understand what you're trying to do is move forward fast. But I think we can quickly go through the items and see if there's anything else. Virginia. I'm sorry, go back to Dave.
>> Dave Zenker: No, that's okay.
>> Ed Rast: Virginia.
>> Virginia Holtz: Virginia Holtz. I'm interested in what Bob Brownstein had to say about the information that would come out, and I would just offer another possible way in which that information could be achieved for the public, and be easily accessible, would be to require a study session on projects that are that kind -- that would -- that there would only be a study session, the information that's -- that he is recommending be brought forth so that the council was talking about it in the public, the public can be there to hear the conversations, and to receive the information, and to digest it. That's just another comment that I'm throwing in the hopper.
>> Ed Rast: Ken Podgorsek.
>> Ken Podgorsek: Ken Podgorsek. I like the direction that we're going with this. We do need to discuss these items in more detail, and I think we needed to do that. On an item we have discussed in detail I want a housekeeping issue. Has a memo been forwarded to the City Council regarding item number 10, regarding the calendar? Is that going to be included in the -- with the reports given for the study session? We extensively looked at that and had recommendations, which we took a motion and sent it

forward. And I just want to understand, is it being sent forward?
>> Ed Rast: My -- we presented it at the update in August. The mayor sent a letter to us, which we have not considered, with concerns that had he which we have not discussed. So I think one of the things we may want to -- if we start down through this and just go -- quickly go through each of the public reform proposals and talk about them, and then decide which ones we will have for study session and which ones we need to agendize, then move forward on that. Does that make sense? Dave Zenker.
>> Dave Zenker: The motion of our action is reflected in the minutes of August 14th. It is not reflected in this latest list. Let's at least do that.
>> Ed Rast: That makes sense.
>> Dave Zenker: Currently the list states, the Sunshine Reform Task Force has discussed this and recommended changes.
>> Ed Rast: We did recommend changes. I agree.
>> Dave Zenker: Before the City Council and I would endorse that why don't we go through the list and determine the ones we want to quote-unquote pull, make a motion to pull those and now move on.
>> Ed Rast: Public information reform 4, is there additional comments on that? That's the one that Bob spoke to. I've got a comment on it. A lot of what Bob said makes sense, especially the standardization of the reporting that goes on on this. Because a lot of these things are very difficult to understand. I think you need to take into context of how one of these comes forward. If the city is going to have these type of subsidies come forward, they ought to come forward through a public process. In other words, through a commission, a committee, something. And that's where the public hearings are then given. And also along with that there ought to be -- we ought to have a very clear oversight for all of these items going out. Because right now I'm not sure we have a clear oversight. One of the things I would think is you would have an oversight, a public hearing when it's initially proposed, either on an annual basis or when it comes up. And when the period is over you would have another public hearing and actually look at the results. A lot of times when we give grants out there's no result. We say we think it's going to do this and we have no idea actually what happens. And I think the grand prix is a good example, a lot of other ones. Susan Goldberg do you have --
>> Susan Goldberg: I think Dave said it well.
>> Ed Rast: Dan McFadden.
>> Dan McFadden: Dan McFadden, City Manager's office. I think Bob's comments are well on point. As Sheila said, this is all going back in January as a pilot project. It's going to come at the same time as the council is thinking about what they're going to do with the council subcommittees. I would speak to Virginia's point, maybe it's not a full study session, maybe it's handled with the staff and Brown Acted and et cetera. Maybe the council subcommittees are where these things should be directed.
>> Ed Rast: Ken Podgorsek.
>> Ken Podgorsek: Ken Podgorsek. I want to point out at least from what I heard in Bob's comments which Bob, I fully endorse. It was not only the issue of bringing this information to the public but Bob actually was defining what information needs to be brought to the public. There is no definition now. The areas he brought up really when you look at most of these issues, and we can use the grand prix as a common example, because there was no discussion of the issues or these specific items that he brought up and there was no public discussion whatsoever, because there was no requirement to discuss how these -- how that subsidy would affect the San José from these variety of different areas, there is a thought out there that the parks are turning brown because we funded the grand prix. The streets in downtown San José have more litter on it because we funded the grand prix. That may or may not be true but I think when subsidies and we see this a lot in San José, when subsidies are considered, I think if we

have all the information, okay, it's -- at home when we make the choices at home relative to our home budgets and say we're going to spend $2,000 on this vacation, we mentally make the decision that, but there's other things that we're not going to do because we're spending the $2,000 on vacation. By disclosing the information, I think that's the key part of what Bob was saying. By saying this type of information is required in these studies and it's given out in plenty of time. When they do have these public meetings, the public can address these issues well and so can the councilmembers, because they will have all the information in front of them. I didn't want to lose the detail that Bob was basically putting forward here, because I think the detail is the key to his proposal.
>> Ed Rast: Sheila Tucker.
>> I just want owed to call out, I knew my information would be useful in some point.
>> Ed Rast: I can't hear you Sheila.
>> The packet that contained, the information from the committee members, the types of information that she would like to see in these proposals, so I know now is not the time to walk through that but I just wanted to call that to your attention, that you should have that proposal, that outlines in far more detail than we had a chance to get to today of I believe what she's looking for.
>> Ed Rast: Any additional comments?
>> Joan Rivas-Cosby. We've had numerous considerations about the management of HP pavilion by Silicon Valley sports and entertainment. Would we expect that corporation, a private corporation, to provide that or would we put that burden on staff? Who's going to actually do the work?
>> Ed Rast: I think that's a detail that city staff can work out. The group requesting the subsidy should be providing some of that information that they already have and that the particular departments, commission or committee would direct staff to provide it. And if you had it in a standard format, it would be pretty easy, the first couple of times would be tough, but after that you'd end up having a pretty easy format to work with. My suggestion -- do you have any other comments Bob?
>> Bob Brownstein: I just want to say that I'm very interested in the ideas of trying to create some kind of additional deliberative step, whether it's council committees, or study session, or an oversight commission, or whatever. Because these kinds of issues really do need a format where people can interact with their decision makers, outside of the very rigid two-minute formal public hearing context. And to be quite candid, particularly in the case of the redevelopment agency, its history of doing community outreach in a way that is inclusive is not very impressive. So some kind of mechanism that would be genuinely inclusive, so everyone who wants to put their two cents worth in would be able to attend and, would be in a discussion formats where they would have decision making powers with their pierce would be a good idea.
>> Is there one we need to talk further about and have it agendized and two, the concept, the overall concept ought to be discussed in the study session with City Council? Because this is a very large concept. So does that make sense, that you -- Margie.
>> Margie Matthews: Let me ask about the process we're following. This report is called status report on reform measures referred to staff. Staff's already working on these, going to report directly to the council.
>> Ed Rast: Right.
>> Margie Matthews: These aren't technically on our agenda. But we want to weigh in?
>> Ed Rast: They are on our agenda. They were referred to us and we were asked to comment on them if we thought appropriate. At least my feeling of the consensus is yes, we want to comment oupon them. So we should probably, I think this is a large enough issue it ought to be in the study session comments and second of all it ought to come back and then we can get into the details at that point in time.
>> Margie Matthews: Let me just finish. So in my mind I think we've had our discussion. We should report

out on November 30th, have staff draw up some bullets of what we've been talking about here, we do support this and we want to go a little further, we're suggesting that there be additional study sessions, and opportunity for real dialogue with the public, and that the staff memo should contain more information than standardized form and we're done.
>> Ed Rast: I think you're done.
>> Margie Matthews: Then we agree.
>> Ed Rast: I have a suggestion. Rather than a study session, it was suggested that it would go through a commission or a committee that would include the redevelopment agency or any other city bodies, policy bodies, so that the public can comment upon it, before it is referred up to -- to rules and then to council, okay?
>> Margie Matthews: My point is as far as us as an advisory body we've done our job, we've had our discussion, we agree, we don't have to come back with that.
>> Ed Rast: Susan Goldberg.
>> Susan Goldberg: On the other one we've had a lot of discussion about, number 10 which is the disclosure of the calendars, I just, I think and I think I share Dave's concern that our strong consensus, that we think disclosure of calendars quarterly is completely inadequate.
>> Ed Rast: I agree.
>> Susan Goldberg: I'm worried that that kind of keeps slipping through the cracks. And how do we make sure that that is reflected and that we, in fact, did pats the motion that it be done in three days which is done in City of San Francisco.
>> Ed Rast: Let's finish up on this one, when we come to 10 we'll talk about that. Sheila do we have copies of the mayor's letter with us?
>> No, those were distributed -- yes, actually it would be in the public information packet that we have not yet gotten to.
>> Ed Rast: Let's go there. When we get to 10, pull that back up, discuss that, make our recommendation and move on.
>> The other option would be to just refer that item. We do know what the --
>> Ed Rast: The three issues are?
>> Yes. Because I doubt we're going to get through them today.
>> Ed Rast: We might be able to.
>> Sheila, in this packet there is no 1, 2, 3. It starts on 4 on my copy. Is there a reason why 1, 2 and 3 is missing?
>> Ava?
>> They were referred to the task force.
>> Forms that were referred to the task force and reforms that were referred to the staff for implementation, and those under public information, 1, 2 and 3 were referred directly to the task force. We picked up on whatever numbers are reflected in the matrix are the ones that were directly referred to staff.
>> Okay. So is it appropriate for us to pass this to the council with our endorsement of the staff actions except for the items we want to pull and discuss?
>> Yes.
>> So basically now we need to decide which ones we want to pull and which we want to pass back to the council with our blessing?
>> Correct.
>> Should we go through them one by one or should we just --

>> Ed Rast: That's what we're trying to do. On item number 4, one, do we want to basically discuss it at the study session? We have a consensus on that?
>> Susan Goldberg: I don't know if we need to discuss it.
>> Ed Rast: Bob Brownstein.
>> Bob Brownstein: Let me understand. What we're doing now is we're going to decide which ones we're going to send to the council with our blessing, the short list of what we want to comment on, we will decide how we want to comment on it?
>> Ed Rast: The study session is going to basically bring the council up to speed on where we are. And this seems to me, at least, a very important issue that ought to be included in the discussion at the study session.
>> Bob Brownstein: Okay, fine. The ones that we take out, we'll either send it forward with a blessing or we make our comments directly at the study session. I agree.
>> Ed Rast: Sheila.
>> Sheila Tucker. My suggestion is you legality staff prepare a set of slides on the ones you agree with, basically capture at a high level, what we want, more detailed reporting, whoever presents that item can go into further detail.
>> Ed Rast: So the second question on this one, do we need to agendize it further for discussion, or Margie says, we have a high level of discussion and then move on from there?
>> I think we can probably say that we endorsed the staff's action and would later want to provide suggestions, would that be fair?
>> Margie Matthews: I would make our suggestions on November 30th.
>> Ed Rast: Okay, this is going to be on the study session on the 30th. Is there additional comments on item number 4? Item number 7, public, I'm sorry Ken Podgorsek.
>> Ken Podgorsek: I'm lost open this one. I thought just a few minutes ago we had a rough consensus that this -- that we -- the comments that Bob made can't be discussed in five minutes nor can they be sent forward. I'm concerned, unless we're prepared to do that right now and say we're prepared to actually send it forward the way that he made the comments with no further information on our end. If we send this forward and give it a blessing we are basically saying we like it as it is. I don't get the impression that that's the case. I think we should discussion it at the study session, because we can get some vital information from the councilmembers, on this issue also. But I think specifically on item 4 request that it be -- request that we have the time to send forward a more comprehensive proposal at a future -- at a soon to be future date.
>> Ed Rast: So we're back to comment on the study session, let the council know and reagendize it probably in December.
>> Ken Podgorsek: Let the council know we're not blessing it.
>> That's what I said. We can bless the staff actions taken to date, which push the actions forward, which is better than the current status quo, but we can say we want to make some further recommendations.
>> Ed Rast: I would go further by saying we have looked at further recommendations, present those further recommendations, let us know where they are, and that would give us further.
>> Do we support the work that staff has done so far? These are good things and we may want to go further, right?
>> Ed Rast: Bob Brownstein.
>> Bob Brownstein: I have no problem with telling the staff, what they've done so far is better than the status quo. I think we want to tell them that we consider that inadequate. That the general reasons we consider them inadequate is because it does not provide enough time for public deliberation and it doesn't

provide a systematic set of data. I think we can give examples so they can understand what we're talking about. And then I agree with Ken we're not ready to tell them this is the exact set that we recommend that staff do, but that we intend to deliberate further on this, and provide them, in our report in January or whenever we manage to get it done, how we think this could be improved.
>> I think we're saying the same thing.
>> Ed Rast: We're saying the same thing. Question to staff, Bob's proposal is a fairly complex proposal. How long will it take for you to take a look at his proposal to see what the impact is going to be?
>> Well, I think that we have had this for a while and we've looked at it a little bit. I think a key part of this is nothing should go to the council directly unless it's been heard by a subcommittee, or a study session, or something that allows adequate input from the public in discussion. And that any staff report should include these -- this particular set of information. That is fine for us to put that down, and to send it forward to council. Now, council may, as you know, fine-tune it a bit. But yes, we can work on that. I mean, I don't see any big delay on getting it together. We could certainly have it down in some kind of form for the study session on the 30th. And I assume that the members of the task force would be presenting it, would provide an overhead. I don't see any problem on that.
>> Ed Rast: It makes sense, probably Bob is the most knowledgeable on this, he would present it. Unless everybody else is okay --
>> Is everybody okay with endorsement and reagenda? Endorse what staff has done so far and reagendize this for further discussion and staff input, yes.
>> One point of clarification on that, would this specifically, relates to subsidy in excess of $1 million, that's the issue, right?
>> Ed Rast: Right.
>> Thank you.
>> Ed Rast: Judy.
>> Judy Nadler: I can support that just to move it along. I think we've had a good discussion, we're together on this. We can meet with the council on the 30th, and hopefully we'll all agree and we won't have to put this back on this agenda, at least with the hope that that could happen.
>> Ed Rast: We can take a look at what happens. Judy Nadler.
>> Judy Nadler: Judy Nadler. Your comments, based on the information with which Phaedra had given us before, which was the document that looked like a form you could fill out.
>> Ed Rast: Bob Brownstein.
>> Bob Brownstein: Excuse me, Bob Brownstein. This is a very carefully targeted set of data, much smaller than what Phaedra initialed. She sort of distributed sort of the Godzilla set of opportunities for data. And this is now saying, okay, in the real world, what can people systematically deliver that is more chewable.
>> Judy Nadler: So because those are -- we've already seen those so it is not a new concept. What's just been presented is not new.
>> Ed Rast: All right. I think we're finished on this one. Let's go to the next.
>> What did we decide?
>> Ed Rast: To summarize, it's going to be in the study session, Bob's going to present it. We're going to recommend what's here needs to be continued implementation, we'll come back with additional recommendations and depending on the outcome of the study session we may agendize this for further discussion. If the task force feels we don't need to we'll leave it as-is. Does that kind of summarize, any kind of corrections or additions? Dave? We're saying the staff section is fine as it goes but we need

additional time and additional stuff. Okay. Public information reform number 7. Any comments? That seems pretty straightforward.
>> I suggest we endorse and move it to council. Everybody okay with that?
>> Ed Rast: Public information reform number 8.
>> Ken Podgorsek: I would suggest we move that forward.
>> Ed Rast: We have a consensus we move it forward.
>> This feels good.
>> Ed Rast: Public information reform number 9. Sheila Tucker.
>> Yeah, Sheila Tucker. I just wanted to note this relates to the action, the council discussion.
>> Ed Rast: Any comments on this one?
>> Margie Matthews: This is Margie Matthews. There was already a conflict of interest, immediately stated before the vote, the difference here is it's disclosed 24 hours.
>> In writing.
>> Margie Matthews: Okay, I understand.
>> Ed Rast: Okay. Brenda.
>> Brenda Otey: In regards to a penalty, if it's not followed, what happens if somebody doesn't disclose?
>> Ed Rast: Good point, comments? I have an interesting comment is, right now what happens is, if an item is passed by the council and there's a reconsideration period for up to I believe the next council session, somebody in the majority wants to bring it back, you can reconsider it. Nondisclosure of a conflict of interest would automatically make I think reconsideration. At least in my view. Because what you're doing is, you have nondisclosure, you're not telling the public what the issues are or what the issue is Ava.
>> Jurisdiction to review any complaints --
>> Ed Rast: It would go to the ethics commission?
>> That's what I'm thinking right now but I could get some clarity.
>> Ed Rast: Comment from the task force. Brenda.
>> Brenda Otey: My concern is in that case you could not disclose regularly, and there's nothing -- it goes to the ethics commission. But what happens if you continuously vote on something that you have interest in and I believe there are examples that have come up with a few people on the council in the past. And nothing happens. So what difference does it make if you disclose it 24 hours or not?
>> Ed Rast: Good point.
>> Brenda Otey: There should be some penalty for not doing it and something substantial that's associated with it other than just kind of brushing it over. Virginia Holtz or I'm sorry, Judy Nadler.
>> Judy Nadler: From the city attorney's office, it is my understanding if you vote on something that is deemed to be a conflict of interest, that that creates the possibility that that action could be overturned or voided because of the action of one or more individuals who failed to disclose, is that correct?
>> I believe that's true. State law requirements still apply. This is going beyond the state law requirements of 24 hours in advance of disclosure. So the state law requirements of a disclosure of a conflict still applies.
>> Ed Rast: And what is the penalty for nondisclosure?
>> I don't know specifically but what Ms. Nadler indicated --
>> Judy Nadler: I don't know the penalty but the greatest harm to the city is that that action would be invalidated based on, I think there are some repercussions to the individuals. But this is where, if and when or when, I should say, these things take action, when we -- when we're actually able to move on this, that a really clear training, a concise, you know, template of things to do before you vote, would be

helpful so that people are very clear that this is a responsibility. And I'm hoping that the transparency part of what we're doing which is disclosing the calendars, and having more openness, will allow Brenda for the public and their colleagues and the staff to see where someone is inching towards or going over the line in terms of conflicts. I mean, we can't know everything that's in people's hearts or in their checkbooks, or you know, in their personal lives but --
>> Brenda Otey: They know what's in their hearts and in their checkbooks. And when they take an action and they conceal information that is -- where they are either benefitting or having the opportunity to benefit from something that they -- and they go ahead and vote on it, I believe that there should be some level of penalty that we know about, that is attached to -- on the first time, the second time, or whatever. It should not be something that can continuously go on. And it's kind of abstract as to what's going to happen.
>> The council showed in the very recent past that they have the ability to take action to censure or otherwise their colleague. So I mean, there are other -- various levels of enforcement on that.
>> Ed Rast: Lisa, you had a clarification from the city attorney's office.
>> I don't have the exact answer now but we can certainly rue the California public elections reform act over the lunch hour and get back.
>> Ed Rast: Ken Podgorsek.
>> Ken Podgorsek: Endorsing the staff recommendation, the staff report, with an additional comment that the penalties for violation are undefined and need further investigation.
>> Ed Rast: Dan Pulcrano.
>> Dan Pulcrano: Brenda, I wanted to point out enforcement is part of our later discussions. Just as a comment, what Judy pointed out, that the censure mechanism does exist. And I wouldn't underestimate that the power of the electorate, and the role of the press. If there is an ordinance and it's pointed out in the press publicly, that someone has violated the law, and the effect of the electorate are also moderating factors.
>> Ed Rast: Margie Matthews?
>> Margie Matthews: I'll pass.
>> Ed Rast: I have a comment. To me, if somebody has a conflict of interest and it goes forward and it's passed, I would like to see the item brought back again on the agenda and reconsidered. Because what you're looking at in penalties is you're hooking at either time, basically what you're doing is delaying the process and rediscussing it. You're looking at money. Basically, the penalties are so low. One of the big penalties is that have you to bring it back and reconsider it. At least in my view. Because that would then, once or twice like that, the rest of the council and the public would be, you know, would you have an opportunity to chime in at that point in time and I don't think you'd have a repeat if you had to reconsider. Virginia Holtz.
>> Virginia Holtz: Virginia Holtz. It is my understanding, I'm in agreement with Judy Nadler in the fact that if a decision is made with somebody who is not declared a conflict of interest, that action by the body is considered null and void.
>> Ed Rast: Can be. But I think it comes down, and again I'm not an attorney. But the way I remember reading this is if it's substantial enough it would be null and void. The issue I would look at is carry it a step further and even if it's not substantial that would make it null and void, you would still bring it back and discuss it. Many more things may come out at that point in time. We're going to refer it over, and we'll come back in the enforcement section and look at this. Is that the way we've left it? I'm sorry.
>> City attorney's office. As Lisa indicated we will check the stay law requirements as to whether the action would be invalidated over the lunch hour and get back to the group.

>> Ed Rast: Dan Pulcrano.
>> Dan Pulcrano: At the risk of opening a can of worms, from anybody who remembers the '80s when Tom McEnery had a conflict of interest in a several block area declared by the District Attorney, that was later decided it encompassed a much larger piece of downtown, that was actually determined illegally, that would require years of action by the City Council to be rescinded. I just want to point out, that decision by the District Attorney that Tom McEnery's interest was actually broader than the several-block area would simply roll back half a decade of redevelopment. We need to think that through.
>> Ed Rast: Margie Matthews.
>> Margie Matthews: Just a comment again, it's not just voting as I understand the conflict of interest law, it's influencing that vote at all. It is not a simple vote, is that correct?
>> Ed Rast: If you have a conflict of interest you're supposed to leave the room.
>> Lisa Herrick. That's correct. This particular policy is a little more limited. California law for how to act. With this policy number 9 addresses is more focus written disclosure within 24 hours, so it's actually broadening what the state law requires. And then requiring it to be in writing and filed with the City Clerk and the city attorney's office.
>> Margie Matthews: I understand, this is narrow but just for our information, you can't have your staff working the floor and walk out of the room when the actual vote is taken.
>> Ed Rast: Right.
>> Margie Matthews: The other can of worms is, this has to do with financial stake in a project. It doesn't have to do with being on a nonprofit board or you know, voluntary behavior, does it?
>> Lisa Herrick. I believe the way the form is prepared, there would also be a way to disclose common law conflicts as well. And that is sort of the shorthand of describing something that is not a financial conflict, but you just know something's wrong with it. And the policy and the form both require consultation with the city attorney's office.
>> Ed Rast: Lisa, clarification. Is large campaign contributions to an elected official considered a conflict?
>> I don't have the form right in front of me but Rose and I worked with others in our office on the policy and the form. And you know, that sounds like it but without having, making a definitive statement, if the campaign contribution related then to something that was going to happen that was related to an item before council, then I'm going to guess at a that's probably true. But I would guess that that's probably true. Before we start fielding hypotheticals, we need to know what happened.
>> Ed Rast: Virginia.
>> Virginia Holtz: Just one more comment, and I wanted to comment that I appreciate number 9 to include boards and commissions. That is really critical to the transparency of government.
>> We'll probably have to come back on enforcement, right?
>> Ed Rast: Right.
>> Brenda Otey: I have one question.
>> Ed Rast: Brenda.
>> Brenda Otey: On the issue that Mr. Pulcrano brought up as far as the land and everything, was that all the actions taken on that, was that reversed, or was it just --
>> I don't think so.
>> Brenda Otey: So how effective is it if nothing really happens?
>> Dan Pulcrano: Point well taken.
>> Ed Rast: That's something we'll talk about later on. Number 10, I think we'll lead off with Dave. On the calendars, let's see if we can clarify. We have passed it, we have basically said three days ton disclosure, I think we have consensus on it. One of the factors that I don't know if we talked about on the calendar

was that you -- if you saw on the calendar that there was potentially conflicts or other issues that you wanted to bring back, the advantage of three days is, that you're still within the time limit for reconsideration, if the councilmember or the mayor is in the majority, to bring it back again, within the next council session. So that's a second area, in other words, it doesn't do you just like Brenda said, any good you know you have a problem if you can't do anything about it. So the advantage of three days under the current rules, you could potentially bring that issue back, have a person on the majority on the council, have a rediscussion and bring it back up again. City Attorney office, am I correct on that? Isn't there a seven-day rule or next session, bring it back?
>> I think as I indicated we need to check the rules. Because I don't want to give you an answer without having checked the rules.
>> Ed Rast: Susan.
>> Susan Goldberg: I'm honestly not sure we needed to rediscuss that. I believe we had one of our rare unanimous moments.
>> Ed Rast: Brenda had the issue. Dave then Brenda.
>> Dave Zenker: The mayor did direct a letter to us on October 5th. It had good questions in it as to what needs to be on the calendar and what doesn't need to be on the calendar, as relates to the time line of the calendar. The three-daytime is a good one, the safety we're talking about not allowing us to know at all times where a particular elected official some it allows for the safety issue to be taken care of because it doesn't allow real time notification of where someone is, you know, because of the three-day lag. Bought at the same time, it allows for people to see the before a vote takes place who that person has been meeting with. I think that the mayor brings up some good questions about specifically there's one question about competitive ability in businesses that may want to relocate to San José. And the confidentiality of that, the nature of confidentiality of that. I think that's something the task force should discuss later when we start to refine these things. But to me the action we took on August 17th, still stands, even in the face of his questions, because the motion that we made, even in the face of his questions still, I think, is pretty --
>> Ed Rast: Dave, would one of the solutions be refer it over to staff for suggestions on implementations? And the only other one I remember, he had a question why the mayor's chief of staff but not the council's chief of staff were included? We could refer it over to staff for implementation. To include Brenda's comment on whistle blowers and the economic stuff. Because those to me seem relatively easy to come up with.
>> Dave Zenker: My sense is you need to answer all of his questions or none of them at this point. I think you need to probably take all of his questions, quote unquote, under advisement.
>> Ed Rast: At the study session we'll say this is what we want, we've sent it off to staff for recommendation on the details and we'll address the issues in his letter at a later date and come up with a reply.
>> Dave Zenker: Once again, my only request is that this document, the sunshine reform implementation status be changed to reflect the motion we made, page 3 of 10.
>> Sheila Tucker, City Manager's office. The purpose of that document however is to track staff's recommendations on those referrals, and how we're implementing the referrals that were approved by council. So I'm not sure that's the right place to reflect the task force recommendations.
>> Dave Zenker: Okay, I can understand that. Actually I can't understand that. Because what it says right now is the Sunshine Reform Task Force has discussed calendar disclosure and may recommend changes to the existing system. We have made a recommendation to the existing system. So could you at least change it to say, and has made a recommendation of the change of the system.

>> Ed Rast: Of the three days.
>> We can make that change.
>> Ed Rast: And bring it back in study session and who wants to discuss this at study session? I'm sorry, Dan Pulcrano.
>> Dan Pulcrano: I'd be happy to. I just wanted to point out that, and I discussed this with the mayor-elect, the three-day rule. And one of the issues was, it appeared to be a rolling three-day rule. So that every single day, staff would have to disclose what they did three days earlier. So it's essentially you know, 200 disclosure events during the year. That may be burdensome. And that we may want to look at a weekly disclosure, that there be a certain day, like either on Friday or Monday. The posting of the prior week's schedule would be administratively easier. And we may want to pick a day by which the prior week gets disclosed prior to the council meeting. So Monday may be the appropriate day to disclose the prior week, and that's the third day after that Friday. So Saturday, Sunday, Monday, Monday they go back and do that. We should define what needs to be disclosed. This is something I've looked at. I've reviewed the calendars of two councilmembers, and only about 20% of the time, 20, 30% of the time was budgeted for meetings. And the rest of their time was open. It appeared that they weren't even working, if you look at it. So I think we need to at some point supervise what is required to be disclosed on those calendars and possibly some enforcement, that they need to disclose if they've been meeting with people on items that come before council, that needs to be disclosed.
>> Ed Rast: You suggest we reagendize, look at the details, they're going to come back to us and say, all right, what does this mean? That's the concern I've got. Okay, Susan, if we're -- okay. It's Dan's recommendation is that we discuss this item as a study session item. But when the question comes up, as how do you implement it? Because what he has said is different than what we've recommended. But you see what I -- I'm not trying to be difficult. I'm just trying to say, you're going to get into -- if we're not careful, we're going to get into it with the council, they're very concerned about the impact, especially the mayor and Councilmember Campos of how it's going to be done. Dan McFadden.
>> Dan McFadden: Dan McFadden City Manager's office. I like Dan's recommendation, Monday, put the calendar up. Rather than a confusion about a rolling calendar. I'm not sure what staff does at this point to refine this. I think that it's a council calendar. All of you have ideas about it. We probably could pull that information together if you give us what your ideas are. But I don't know that we can generate any recommendations on this thing.
>> Ed Rast: Okay. Brenda and then Susan. But let me clarify something, Dan. What Dan Pulcrano said is on Monday, if you do it on Monday, that's not three days, that's once a week. You'd have to have Monday and some other, am I correct? Okay, so we're talking about Monday and Thursday, something like this? If you're going to go to three days you're going to have it something than one Monday.
>> You tell us. There is an advantage, putting up the previous week's activities.
>> Ed Rast: Monday and Thursday would spread it.
>> Dan McFadden: The more you spread it, it would make it complex.
>> Brenda Otey: One of the things that I would say is having it done Monday. There's five days of the week so once a week shouldn't be -- leave too much stuff out. The other thing I'd like to see is for there to be consideration, and understanding of what would not be put on there, because I think by addressing what would not have to be put on the calendar, you would also eliminate the concern that I had as far as whistle blowers and other information like that. So I can completely support weekly, on a specific date because it's clear. And we can be specific as to the kinds of items that would not have to be on here, we could address the other concerns.
>> Ed Rast: Susan Goldberg.

>> Susan Goldberg: I agree with Brenda that we do need to be specific about what does not need to be included so there is some real clarity. Because I think clarity will simplify the situation. But I would urge us to do more than once a week and to do every three days which would essentially be twice a week week.
>> Ed Rast: Like Monday and Thursday.
>> Susan Goldberg: Pick two days. Don't make it a rolling thing. My concern about once a week is it doesn't give people time to react to the disclosure, it's not timely enough. And so things could, you know, go further down the road without people being able to really react to what they've learned. It's sort of like, you know, what we've learned in San José, is that the three-day notice, you know, before council meetings certainly has not proved nut for council. Pick two days, Mondays and Thursdays, I don't care. And I think that would be a good way to do it. But a rolling system does look to be a problem.
>> Ed Rast: Karl Hoffower.
>> Karl Hoffower: To go and have a staff member to do this day, this day, this day, that's more cumbersome than at 5:05 p.m., the day is done, publish the calendar, and it's done. It is a rolling thing. In my clinic, every even at 7:05 go through the credit card batch and batch it out. It's a standard thing before you turn off the lights and turn on the alarm. It should be a routine thing that the City Council receptionist goes, before the day is done I have to publish my calendar.
>> Joan Rivas-Cosby: Joan resist Cosby. Maybe we should move on to the bigger picture of what we expect to be disclosed. You could have constituent meetings on local parks, and then does every constituent want their name out there? I peen, could we kind of go to a bigger discussion on what we would expect to see? Or what we would not expect to see?
>> Ed Rast: Ken Podgorsek.
>> Ken Podgorsek: Ken Podgorsek. Couple of items. I can support twice a week. I probably am more personally inclined to once a week but I can support twice a week because I don't believe that that's overly cumbersome. Number 2, I want to warn the committee that there's two ways that you can basically take sunshine from a disclosure standpoint out of a city. One is just flat don't disclose it. Which is the problem we have in some cases now, the reason for this task force. The other one is you can burden people with too much information, and too much information in itself is a nondisclosure, because it becomes difficult to vet out the information you want. My third comment is regarding what should be contained in those calendars that are -- which should be contained in those calendars that are disclosed. I fully believe that it should be rolling but the posting of calendars should be three months worth of calendars. You can observe more in a entire calendar than a week's worth. It should be the entire calendar for three months. I know it seems in conflict with my second statement but I learn more by seeing patterns than one single picture.
>> Ed Rast: Susan, do you want to make a motion on this?
>> Susan Goldberg: I thought we were done.
>> Ed Rast: We keep going back and forth between a week or Monday or Thursday or whatever.
>> Susan Goldberg: Do we want to make a motion? That would be every three days.
>> Ed Rast: Monday, Thursday?
>> Susan Goldberg: Sure, I like Mondays and Thursdays, and that we have a clear set of guidelines about what is and what is not part of this.
>> Ed Rast: Okay. So when do we want to -- reagendize the guidelines and come back. Okay, so what we'll do is discuss the council session, three days, Monday, Thursdays and we'll come back with the details and answer the mayor's.
>> Susan Goldberg: And what I will do is, I will do a little investigation between now and then. I know that San Francisco has got a three-day calendar disclosure, and I will find out exactly how they do it and

whether it is considered to be working and bring forward everything I can.
>> Ed Rast: Dave and then Karl.
>> Dave Zenker: Since that was a motion I'll second it. I don't think we have all the information as to how the technology will work out.
>> It is not an I.T. problem. He confirmed it is not a problem.
>> Ed Rast: Who wants to discuss this at the study session? Susan, good.
>> Dave Zenker: I'll be there too.
>> Ed Rast: All right, Karl.
>> Karl Hoffower: I wanted to say the thing on the technology, I can't believe there is some infrastructure in the valley that it just happens, it is part of the system's software.
>> Ed Rast: Virginia.
>> Virginia Holtz: Virginia Holtz. Mine is a question to the maker of the motion. Does this, and is it our expectation that this would include the full quarter report?
>> Ed Rast: Yes, would I think.
>> Virginia Holtz: It would be updaylighted every three days.
>> Susan Goldberg: That's correct.
>> Virginia Holtz: The quarter does show?
>> Ed Rast: It would be updated every three days, the entire quarter would show as they're going along. Dan McFadden.
>> Dan McFadden: Dan McFadden City Manager's office. We did look at the calendars at the five vetted cities. We could give you the information. It is available. You could look at it. It is external events, community events. That was in San Francisco the issue. There was no in-office meetings that we had to check. It is importantly to look as at that, some of the council have checked those calendars and you will get those questions.
>> Ed Rast: Dan Pulcrano and then Susan.
>> Dan Pulcrano: I'm just trying to clarify the motion a little bit. The motion is for every three days disclosure, Monday-Thursday, which I think is excellent. The only question I have is does that give the opportunity to rewrite the calendar, or that Thursday disclosures, what happened that Monday, Tuesday, Wednesday, whether the Monday disclosures what happens Thursday, Friday, sat. -- or Friday, Saturday, Sunday.
>> Ed Rast: Ken Podgorsek.
>> Ken Podgorsek: Ken Podgorsek. The he information that is being disclosed is the meeting information from the previous three months.
>> Ed Rast: So you don't have to look at 20 different things to find what you're looking for.
>> Susan Goldberg: It would come up automatically. Because you've already done that homework.
>> Ken Podgorsek: To give you an idea of my daily calendar, if I wanted to click, I can get today's schedule, this week's schedule, can I get my schedule for the last month and the last three months. If it don't contain information, maybe, I don't know whether three months is the right number, but if it doesn't contain information that is at least several weeks old you will never see the patterns in meetings and without the patterns you will miss a lot.
>> Ed Rast: Dan McFadden and then Brenda.
>> Dan McFadden: Dan McFadden. I think what you're really looking at is the sunshine on these. How long do we keep the calendars? You basically want them to continue these live fors there months before --
>> Ed Rast: Before it sun sets, okay. Wasn't it Brenda and Dave.

>> Brenda Otey: I was going to say, what we should do have a view of the quarter but it be updated on the Monday, Thursday of each week. The quarter would be there consistently.
>> Ken Podgorsek: I think we're in agreement.
>> Susan Goldberg: Violent agreement.
>> Ed Rast: Bob Brownstein and then --
>> Bob Brownstein: Bob Brownstein. From the way the discussion is going it's certainly becoming clear to me that the idea of getting access to the calendar isn't simply an effort to try and understand what the scheduled and predictable interactions that an elected official has, make them public, but that there is some hope that it could be used as a device to capture essentially all the interactions that elected officials have, that is, that are not scheduled meetings that you would want to be recorded in the calendar, even though somebody didn't put it in the calendar ahead of time. Based on my experience, I think that is not -- it is not something that you're likely to be able to get done. Let me just finish. The number of unscheduled interactions that a councilmember or councilmember's staff last in any given day is legion. The mayor's chief of staff may meet with 25 people he didn't anticipate meeting with during the day, go to a community event, people come out of the woodwork to talk to you. And in most cases, that mayor's chief of staff will have forgotten half of those interactions by 5:00 p.m. To ask people who are in that political life and who spend an enormous amount of their time interacting with the public to keep track of every interaction they have and almost all of them are not about how's your kid, they're about something that the city's doing. If you're going to try and keep track of all of those, A, the people will almost certainly fail to do it because it's an impossible burden. And B, it takes sort of a device that I thought we were using to capture sort of the major things which make sense to be looking at through a sunshine ordinance, and instead to sort of capture sort of every moment or even half-moment of political communication that happens with an elected official which I think is probably not a rational thing to try to reach through a sunshine ordinance.
>> Ed Rast: Susan and Karl and Dave.
>> Susan Goldberg: I don't think anyone is expecting to capture every moment. I would add that you can get the governor's schedule. You can get the governor's calendar. He has decided to make that available. I don't think asking what your schedule and who are you meeting, is not a high burden. They should let the public know who the elected officials are meeting. We can come forward and decide and define it, so it isn't, you know, overly burdensome but we should try as the mayor elect said, to push the bar forward and to try to come up with some things that will make our government more transparent. We have all seen what happens when it isn't. I think this is a real good step in the right direction. We should approach it with all sincerity and good faith rather than say up front this is going to be an overly burdensome effort. Why don't we see what we can come up with that will make it a reasonable effort.
>> Ed Rast: Karl and Dave.
>> Karl Hoffower: You said it so eloquently I have nothing further to add.
>> Ed Rast: Dan Pulcrano.
>> Dan Pulcrano: The sunset issue is one I don't agree with.
>> Why?
>> Dan Pulcrano: Just because you said it and I have had the history of reviewing political calendars and the idea of archiving these does make sense. Secondly, if we do it as a rolling quarterly issue there's going to be all these files that overlap and it is actually going to increase the storage capacity. So it may actually make sense, these are in PDF format. It may actually make sense to keep -- to break them into daily files, and then archive them in folders. They are searchable on the Internet. You can actually cross-correlate names in a Google search on these, which I think is an incredibly useful tool for anybody researching this. And that the effect of these, as daily records, would actually achieve the objective and

they can be archived in folders and subdirectories. I hope I'm not getting too technical on anybody but by doing a quarterly rolling release does create an overlap and there is no reason why the three-day release couldn't be a series of files posted in PDF format.
>> Dan, I wish I was technically able to disagree with you but I'm not. We'll have our staff check into that.
>> Ed Rast: Call for the question? Bob Brownstein.
>> Bob Brownstein: I'm delighted that people want this be done in a reasonable way, that is my desire also. And if you really think that the governor who drafted a 2500 page performance recommendation pattern for the State of California, all of it done behind closed doors, is revealing his entire calendar You are not being as critical as you should be.
>> Ed Rast: We have call for the question. All those in favor? [aye]
>> Ed Rast: Anybody opposed?
>> Brenda Otey: Was that vote to call the question? I want to make sure we get a reading of the motion before we vote on it.
>> Ed Rast: That's what I was going to do. Before we read the motion, public comment. Sheila, read the motion. And then do public comment.
>> I was doing the minutes but I'll give it a whirl. The motion was by Susan Goldberg and that is to change the number of days to three days, disclosing on Monday and Thursday, that the task force would come forward with a clear set of guidelines of what should and should not be included. And they want-and you want a historical view of the past quarter.
>> Ed Rast: And also would address the mayor's questions in his memo that was sent to us.
>> The other clarification was the three day release would be for the three immediately preceding days.
>> Got it.
>> The three immediately preceding days. And as a clarification, that would meet with what I said and Susan said, was that the live posting, that the archived posting or the online posting include at least the previous quarter.
>> Ed Rast: Is the maker of the motion and the seconder okay with what's been stated?
>> Yes.
>> Ed Rast: Ken Podgorsek.
>> Ken Podgorsek: Ken Podgorsek. I'm concerned about that time line. Because sometimes, calendars are fluid. Council calendars are very fluid. They will sometimes start the day with the calendar, meetings will get shifted, meetings will get shifted. My concern is if on Monday morning you have to post that calendar, is that -- and have you to post Friday's calendar, I'm not concerned about Wednesday's but maybe I'm concerned about Friday's and Thursday's. Have all of the necessary administrative functions been done to make that calendar accurate? My concern is related to the fact that we may be asking them to post, it may be possible Monday morning that the person was off on Friday, and they didn't -- they didn't change all the different things in the calendar. So my concern is, are we asking them to post calendars that may be inaccurate. It's not so much the issue of what should be posted. My concern is maybe we're being a little too tight.
>> Ed Rast: I believe -- do we have consensus of the task force we can comment --
>> Judy Nadler: I have another comment. We can look at the best case scenario rather than the worst case scenario. I can think of a million ways everything can tank. But I'm hoping that we can say this is our aspirations, we have set the bar high, we should move on.
>> Ed Rast: Brenda.
>> Brenda Otey: I agree with setting the bar high but I also know in having worked in an administrative function that you sometimes make mistakes. And does this system allow for somebody going to make a

correction, within a period of time, to make sure that it's accurate?
>> Ed Rast: Eva?
>> I just wand to remind the task force that on August 17th, did you make an exemption for the city attorney's office. For attorney client privileges. And that the disclosure be brought in to include in addition to the mayor and City Council, department heads, City Manager, City Attorney, City Auditor and the mayor's chief of staff and budget director.
>> Ed Rast: Dave Zenker.
>> Dave Zenker: We've made a motion on this previously. The motion we're making is very similar to that. Part of that most is that these folks who are included in this requirement are actually required to keep a calendar.
>> Ed Rast: Right.
>> Dave Zenker: So how do the two motions that we're going to now make a second motion today how do they interact? I want to make sure everything gets encompassed together.
>> Ed Rast: Go back to the maker of the motion. Ask for clarification.
>> Dave Zenker: Ask for a modification --
>> Ed Rast: Modifies of modification of the other one, second agrees to that. So any public speakers? Yes.
>> James Chadwick. Just one point, and I think it goes to what both Bob and Susan were saying. One perverse effect of requiring more openness is that you actually create an incentive for evasion. So people could just stop putting things or calendars, if they don't want to show what they're doing. That's why the definitions are going to be critical to decide what goes on the calendar, and the requirement that calendars be kept is also part of that component.
>> Ed Rast: All right, thank you. All right. Virginia.
>> Virginia Holtz: This is just a point order. When we call for a -- the question, the intent -- and we voted to --
>> Ed Rast: Call for the question.
>> Virginia Holtz: To call for the question it means to close discussion and to vote directly on the motion without any more discussion.
>> Ed Rast: That's correct.
>> Virginia Holtz: In the future if we still have lots of questions then vote down the call for the question. Please.
>> Ed Rast: Thank you.
>> Good point. Let's call the question.
>> Ed Rast: All in favor? [aye]
>> Ed Rast: All opposed? [no]
>> Ed Rast: One no.
>> Mr. Chairman, is Mr. Brownstein technically a voting member at this stage? Because I assume there's some application process to the commission, actually the filling out of a formal application and a conflict check. I know he's in place of Ms. Ellis Lamkins. But is he actually voting at this stage? Has it been vetted and formalized or he is simply representing her?
>> Ed Rast: Staff.
>> Sheila Tucker, we have not conducted the conflict of interest information at this time.
>> Is there a milks from the City Council for this?
>> No.
>> So the designating organization, if I go on vacation, the Silicon Valley group could put someone up for

me and then --
>> This is something different than what the task force, it was intended for those who resign permanently and that process would work if you are with an organization where you nominated your representative, and that organization would renominate. If you were in a group that was pulled out of a hat, we'd go back to the hat. And those are for resignations. If you want a strict interpretation of the policy, we did not discuss temporary sabbaticals.
>> Ed Rast: Right.
>> Karl Hoffower: Mr. Chair.
>> Ed Rast: Karl.
>> Karl Hoffower: I too was very concerned about this when Phaedra discussed she was taking a leave of absence. We have a seat here that's missing that was supposed to have someone here. And there was some mention that well, maybe we wouldn't want to burden somebody to come on because we've gone so far in the process. And I think as a sunshine committee that we have a duty to not only follow the owners and our rules but also the spirit of sunshine which would be to give someone an opportunity to fill that seat. And then if no one comes forward then as a group say, no one came forward, let's close the seat. Secondary to that is that early on we said that for resignations or absences, we would follow the city's ordinances on that. It's very specific. I read it last night. If someone wants to take a leave of absence, they have to go to the city council. And if they want to resign, then they resign. But for there being a thing, I'm taking off two moist, I'm throwing someone in there who hasn't gone through the process. We are not following what we said we would.
>> Ed Rast: Let me see if I can clarify. I sent an e-mail to city staff, saying they should go through the people on the commission, the original list on the commission, ask if anyone is interested and if they clearly understand the time commitment and then come back to us and see where we are on that. And if we did not have anybody or we would have somebody, we would then be able to take action on that. I was uncomfortable with the idea that we would just abolish a seat. Sheila.
>> I'm sorry we didn't have time to respond to you yesterday. We were trying to get ready for this session. From staff perspective we felt we didn't get good direction on that issue on Thursday. We talked about what the process should be. There were several comments on continuity. That's where it was left. We are happy to initiate that process but we are seeking more specific guidelines from the task force on that.
>> Ed Rast: Dave.
>> Dave Zenker: The vacant seat, which I believe is the commission?
>> That would go back in the hat.
>> Dave Zenker: My response would be it is I believe not in our prerogative to leave any seat filled.
>> Ed Rast: That's correct.
>> Dave Zenker: I believe the City Council has a right to appoint folks and they certainly have put names forward and I they we should move as rapidly as possible to get those seats filled. No matter where we are at in the process. It's that person's job to get caught up. And I think Margie has done a great job in that matter.
>> Ed Rast: City staff would advise us where we are on that. In the situation with Phaedra and Bob, my understanding, staff can clarify it, if we are to follow exactly the rules, Phaedra would resign then south bay labor would appoint Bob. That's my understanding how the current rules are, unless -- Joan.
>> Joan Rivas-Cosby: Joan Rivas-Cosby. You go back to the people who are in the nomination mode. If they're willing to do the work and catch up then great, pick a name out of the hat. As far as the south bay labor seat, I think this is a the perfect solution. I don't think there is anybody who can step in and take the

place of Phaedra as Bob. He has been to probably more meetings that happen some of our official task force members have been. To deny him the position would be completely against the dedication that he has demonstrated.
>> Ed Rast: Ken Podgorsek.
>> Ken Podgorsek: There are seats assigned to organizations, I happen to hold one of those seats, the organization would name their own representative. But I, as every other member here had to fill out a statement of disclosure to see if there was any potential conflicts. Of which that statement was reviewed and my appointment by my organization was confirmed. I think Bob's an excellent representative for the south bay labor council because he's been at every meeting, he can step in, he has been an active participant from the public. I do have concern as to voting rights today. If the -- I seriously do not believe that we're going to find any conflict of interest. But if the conflict of interest has not been reviewed and not been shown that he doesn't have a conflict of interest, him having voting rights at this particular meeting might put us at risk. If in the future it is found that he has a conflict of interest. Which I doubt he seriously has.
>> Ed Rast: Karl and Dan and Brenda.
>> Karl Hoffower: Karl Hoffower. I think Mr. Brownstein is a fabulous addition to this task force. He has been to more meetings and has put in more cogent comments and given real life examples. We have to follow the process, we need to hold the bar high and go through the exact ordinances and rules on how we replace someone who leaves the committee.
>> Ed Rast: Dan.
>> I agree with Karl. I agree with his participation and think he's an excellent representative. It is not an issue of whether it's fair or not to withhold the voting. We just talked today about an undisclosed conflict would void actions. And my concern is that if we did not do what Karl says which is follow process, which is actually do what we're supposed to do and we need clarification on that, any action we take at this entire-day meeting could essentially be voided. So I just want to be sure that we're on firm legal ground, I'd like an opinion on it before we allow his vote. Otherwise we've contaminated our entire day's vote and we'll have to come back for an entire other day.
>> Ed Rast: Brenda and Susan.
>> Brenda Otey: First of all I think the issue of conflict of interest is an ongoing one. No matter what you fill out in the beginning, we have a code of conduct and ethics that says as we proceed through and interact on each individual item we should also expose or bring forward any kind of conflict of interest that may not have been present at the beginning, that, because things change. And so that it's not -- it's not something that's in concrete at the beginning. It's something that's kind of fluid. Because your position, you may change your position, and or buy stock in something that changes. So that you may have a conflict of interest at some point that you didn't have at the beginning. So it's all very fluid. I also think that as the position that is representative of a particular organization, I don't believe you can withhold the voting rights of that organization based upon their -- a process that has not been worked out. If -- if the person -- the voting -- the voting right for that particular organization is a part of the seat, and the person who's assigned to that seat changes, you can't just say, okay, well, so now, we change that. If the -- I don't see that we're trying to work out a technicality now for a process that may not have been completely thought out in the beginning, because we didn't foresee some things happening, people changing, or if there was a change, how to make sure that it happened, you know, and that all the documents were done in advance. But -- I believe that it's wrong to withhold the voting rights of a particular organization, when the organization is who's represented on the task force. And I can concur with everybody else, as far as Mr. Brownstein. He's been here more than a few people who have -- are on the task force. He gives great

input because of his experience and knowledge in the areas. I think we need to get beyond withholding of votes, and say what needs to happen in the future.
>> Ed Rast: Clarification by Ed Davis.
>> Ed Davis: I don't know how much I'm going to be able to clarify on this because I think we're in a fairly unique position. I opined early on, ironically as a result of something Bob brought up, that we're not bound by the state conflict laws. What we are bound by are the code of ethics that the task force agreed to follow. So the first question with respect to the conflict of interest is, I can't see any legal reason that if Bob votes, it would void everything that we've done. I think if Bob agrees I think he has by joining us to abide by our code of ethics and conduct that we is voluntarily adopted, that should satisfy the conflict issue. The other problems beyond the conflict part is simply, is it okay for any member of the task force to replace himself or herself to come back later on, to me that question is ultimately going to have to be resolved by the City Council that is responsible for creating the task force. And I'd suggest that they either, you know, give their blessing, you know, to this kind of situation, I agree completely with what everybody said, that it seems to me counterproductive not to let Bob sit on this task force and vote. And I can't believe that the City Council, because all we do is make recommendations to the City Council. We're not binding them in any way, shape or form. And I can't imagine that they're going to look at our work product, assuming there is some later on -- [laughter]
>> Ed Davis: That they look to our work product and say we're going to reject it not because we believe it's not meritorious, but we're going to reject it because Bob sat on the committee for three or four weeks. So I would suggest from a legal perspective, is let's go forward, let Bob vote, treat him as a member of the board, have the City Attorney take it up with the City Council or whoever's the responsible entity. And if they don't like the process, they can tell us.
>> Susan Goldberg: I think that's a great dose of common sense.
>> Ed Davis: Coming from a lawyer, even.
>> Susan Goldberg: Yeah, and we should go forward and I am sure Bob, given his very public propriety when it comes to issues of conflict of interest would be the first to disclose if he had one.
>> Ed Rast: Karl.
>> Karl Hoffower: I just want to say, again, we've said we are going to set the bar high. We said we would follow the code of conduct. We said we'd follow the city's rules when somebody missed meetings, they would be kicked off if they missed too many meetings. Again to reiterate, Mr. Brownstein is a fabulous addition to the task force. I think Phaedra was trying to do the right thing by replagues herself with a competent person. But we're on the slippery slope right here and I'm sad to say our legal counsel says you should ignore the rules you guys should follow because it just makes common sense. You know, there's things that I'd like to ignore as a doctor but I can't conditional because I said I swore an oath, I'm going to do it, I'm going to follow it. So I don't know why we're having the discussion. We need to follow the rules.
>> Ed Rast: Ken Podgorsek.
>> Ken Podgorsek: I want to suggest a compromise if Mr. Brownstein is willing to accept the compromise. I actually wouldn't have a problem with you voting. But there are a lot of points here and we're arguing about setting the bar high. I think there's tremendous validity to Mr. Brownstein continuing in this meeting in the role of being part of this discussion, representing the south bay labor council's positions as part of the discussion. And to -- but because all the process hasn't been completed for his, you know, holding that bar high, I would ask if he would be willing to abstain from voting on any issues that we put forward today, and just actually take an abstention, but it be a full participating member in all of our discussions.

>> Ed Rast: Brenda.
>> Brenda Otey: Two things. I'd like to see what rule we're referring to, as far as what Mr. Hoffower is saying. I'd like to see what rule we're referring to, I believe as far as attendance, I know what the attendance policy was that was put forward. I don't believe that I have seen anything as far as the replacement of people on the committee, other than to say that if it was an at-large seat or a seat that was held where there was a name drawn from the hat, that that person -- someone would be drawn from -- go back to that pool for that name to be drawn. And I think as an organization, if the Mercury News seat becomes vacant, by something happening, and Ms. Goldberg cannot make meetings, then the Mercury News would decide who replaced her, we wouldn't sit here and decide who replaced her.
>> Another member of the press drawn at random.
>> Susan Goldberg: It is a media seat, not the Mercury News seat.
>> Brenda Otey: The media would decide who would replace, sit in that position. I think as far as the position, as far as the commission seat, with Mr. Robertson, they -- it goes back to them to decide who sits in that seat.
>> I think given our council's assurance that our actions would not be -- would not be compromised I think we can move on.
>> Could I possibly --
>> Ed Rast: Dan McFadden.
>> Dan McFadden: Dan McFadden City Manager's office. There is a precedent, here, when Blanca did resign, we took two names as backup and then informed the commission. Council has delegated you the authority to run your committee, your task force the way you want to run it. I think we would certainly inform council and if you wanted council action to back this up we could probably get this to council. The 5th would be pushing it. The meeting of the 12th. But I think if you take action here, and inform the council, that you're within the rules.
>> Ed Rast: All right.
>> Let's move on then.
>> Ed Rast: Margie.
>> Margie Matthews: At some other point could staff give me the outlines? I wasn't here for conflict of interest discussion. We're talking about access to information, ethics, every single one of us have a stake. That's why we're selected and interested in the topic.
>> That was the point. Maybe you don't need to.
>> Ed Rast: Staff has clarification then that you're going to take on the vacant seat.
>> Correct.
>> Ed Rast: From the commission, go back to the people that were there, inquire, draw the next name, inquire if they are -- if they are willing to serve and understand the time commitment. And if you run out of people, either you come back with the person or you'll -- you can come back and say that no one on that particular list is willing to serve.
>> And we'll also conduct a conflict of interest review for that seat and begin the process for Bob.
>> Ed Rast: In the case of the south bay labor seat, you're going to therefore go and do a conflict of interest on Mr. Brownstein.
>> Correct. And we --
>> Ed Rast: The only question we get into is how you handle it, my understanding is there would have to be a resignation and a reappointment and we would then advise council.
>> Info memo to council, exactly.
>> Ed Rast: The only other question is, how do we handle things for today? It makes sense that he sits

and discusses to me. The question is based on the rest of the task force, do we want to have a motion or a consensus on whether he votes or not today? Does that pull the conversation together?
>> I would make a motion that we --
>> Ed Rast: Bob Brownstein.
>> Bob Brownstein: I have been to most of these meetings and I don't recall very many of them in which a decision is decided by one vote.
>> Ed Rast: That's correct.
>> Bob Brownstein: Why don't we just do this, I'll participate without voting. If we get to a situation where --
>> Ed Rast: It's close.
>> Bob Brownstein: Where it's one vote or one or two votes, then I think the South Bay labor council would appreciate it, considering we've been participating since the beginning, that that decision could be deferred until we can legally clarify that they have representation.
>> Ed Rast: That sounds fair enough. We have public comment. We have a motion on the floor. We restated the motion. Sheila.
>> I just want a point of clarification for the info memo to council. So Phaedra would be resigning. Is that permanently or --
>> Ed Rast: I believe that's the way unless I misunderstand the way the rules go.
>> Okay, I want to clarify that's the understanding of everyone.
>> Ed Rast: And get information from City Council, when she wants to come back, I would assume Bob would resign and she would come back. Or she would be reappointed. I don't remember, seeing, Karl could clarify, I haven't read it recently. There is no prohibition about somebody resigning and the organization having the second person resign and come back.
>> Nothing in the ordinance I read about.
>> Ed Rast: Now the question comes down to, is -- I got to remember where we are. We voted on this? Okay. So basically what you're going to do is change the vote, and he will not be voting. So you had a --
>> Sheila tucker. The only thing I do need is Bob, a letter of resignation from Phaedra to initiate that process.
>> Bob Brownstein: Okay.
>> Ed Rast: And from South Bay, in that same letter resignation and appointment in the same letter.
>> Correct.
>> Ed Rast: The vote basically comes down to everyone, Bob would be recorded as not voting, Ken voted no and everyone voted no. Unless we people we need to revote it?
>> No.
>> Ed Rast: Okay, thank you.
>> Could you vote on whether or not you want to revote it.
>> Ed Rast: Please, not. All right. Thank you. All right. By the way, I thank everybody for the participation in the conversation. And bringing the issue up. Number 11, public reform, number 11.
>> Mr. Chair, earlier --
>> Ed Rast: Ken Podgorsek. Let me just reiterate, please say your name.
>> Ken Podgorsek: Ken Podgorsek. I just want to remind two hours ago we decided that this item needed further -- needed further discussion. And I don't think this is necessarily the appropriate time to do it and that we defer further discussion to this item to a time we can cover it in more detail.
>> Ed Rast: Are you talking about number 11?

>> Ken Podgorsek: Yes.
>> Ed Rast: Any objections to it? Fine, it's deferred. Number 12, council policy manual online, I think that's a pretty easy one.
>> Ken Podgorsek: Yes,.
>> Ed Rast: Any discussion? Thank you.
>> We endorse it, move it?
>> Ed Rast: Right. Neighborhood participation reform number 2. That sounds pretty straightforward also. Any discussion?
>> Ken Podgorsek: No.
>> Ed Rast: Number 3.
>> Karl Hoffower: I just have a question.
>> Ed Rast: Karl.
>> Karl Hoffower: I just have a question being that I'm not that savvy as to what this is actually saying. Can somebody explain what the purpose of this?
>> Ed Rast: What the 14 reforms or the particular reform.
>> Karl Hoffower: The public priority setting meetings, what are they doing? I don't have any experience with that.
>> Ed Rast: I believe every two years the City Council and the redevelopment agency has a series of meetings, Bob could give better clarification on this.
>> What was that?
>> Ed Rast: Karl's question was he was unclear on neighborhood participation reform number 3 which says requires the City Council and redevelopment to hold public participation meetings the beginning of odd years to coincide with the standing committees. My understanding it's the equivalent of a long term planning session or prioritization session. Bob.
>> Bob Brownstein: Bob Brownstein. This would essentially create a public policy setting session, have it take place in odd years.
>> Karl Hoffower: It talks about briefed on CSA priorities.
>> Ed Rast: City service areas. Which is the way they do their budgeting. Margie.
>> Margie Matthews: I think this is a topic the mayor elect was very interested in. He said publicly he wanted to develop a budget process that includes priority setting methods of including the public. I think we would want to defer this to the mayor-elect as he proposes how he wants to go out having public priority settings and not have us spend hours discussing something.
>> Ed Rast: Any further discussion? Sheila.
>> Sheila Tucker City Manager's office. I do believe staff in our office are working on this. If you want to agendize this we can come up with an update on a discussion of what staff has planned for this.
>> Ed Rast: Defer. Neighborhood participation reform number 2, notification to city commissions when the items originally in the commission were heard to council. Seems to me to be a very common-sense one. Honestly, I don't understand why we weren't doing it before. Okay. Next one is, number 5.
>> So we're endorsing that?
>> Ed Rast: Endorsing the referral. Expand, number 5, expand the speaking time from two to four minutes for neighborhood or community organization designees.
>> Ken Podgorsek: Mr. Chair.
>> Ed Rast: Ken Podgorsek.
>> Ken Podgorsek: Neighborhoods would be in favor of this. The challenge would be that neighborhood group or community association designee. That is a nebulous term. I think this needs further study so we

don't end up with 25 people that qualify for four minutes' worth of time.
>> Ed Rast: Public comment and staff comments.
>> Ed Rast: Let's start off with Susan. Susan Goldberg.
>> Susan Goldberg: Actually, given that we're talking about government to which all of the public wants to have input and not just people who are members of certain groups, I would think this should be expanded to anybody who wanted to speak. That it isn't just if you're in a certain club that can you do that.
>> Ed Rast: Staff. We had staff first. Okay, Lisa.
>> Lisa Herrick. The city attorney's office is concerned obviously about any discrimination concerns or equal protection. So we think that it's likely that any expansion should apply to everybody.
>> Ed Rast: Okay. Dan McFadden.
>> Dan McFadden: Dan McFadden City Manager's office. Currently the policy, they set their own rules in conjunction with the rules committee. The mayor establishes the time of speaking here. I think we talked about that before, but just going back on that. If the mayor elect follows through with making the council subcommittees very open, and to focus participation at that level, they haven't been. But if he opens those up, that would be the likely place for sorting those through. If you have been with our council meetings we have a group that sits there that comes up on every item and they talk about anything but the item. And it's a little bit maddening. So you know, somehow I think this thing can be handled better at the subcommittee, I just throw that out for your consideration.
>> Ed Rast: Eva.
>> Eva Teresa. You will have an opportunity to discuss and make a recommendation as part of the ordinance as well.
>> Ed Rast: Ed Davis.
>> Ed Davis: Let me echo Lisa's concern. Under the law, a governing body has a significant amount of leeway, in controlling its agenda, and how much access they give, and how much time, for example, people are allowed. But one thing it cannot do is discriminate based on content. And I think a very strong argument could be made that allowing one group to speak longer than another is a significant content-based discrimination. I don't know if anybody is going to sue over the fact that they can only speak two minutes, instead of four. My guess would be, they very well may. But I don't think you should make your decision on the likelihood of a lawsuit, or not. I think it raises significant First Amendment issues. And I think it would be unwise to adopt a standard that allows one group more time to speak than another.
>> Ed Rast: Ken Podgorsek. Then Judy.
>> Ken Podgorsek: Ken Podgorsek. I have the same concerns from a legal standpoint on this issue. But I think it's important to understand where this issue comes from. Currently, current council policies louse the applicant or the applicant's representative to speak for an extended period of time. Whereas the members of the public, neighborhood associations or people who live in neighborhoods, have a very limited period of time, in this case two minutes. It is a balancing situation where the public themselves do not have the same amount of time to prepare a proper argument before the City Council for or against a particular proposal, and the other parties in this case the applicant have a more extended period of time.
>> Ed Rast: Judy Nadler.
>> Judy Nadler: Judy Nadler. From a practical perspective, having gone through this myself, I would say a great deal of the control really comes from the person who's presiding over the meeting. The mayor has the ability to set the stage, to set the expectations for the audience and to follow through on that. And it's also been my experience that encouraging and maybe in opening up these and revitalizing the committees, and getting more public participation, there will be greater discussion from the public, and

from the neighborhood and community groups, and they won't feel quite so frustrated, and they may be also given some assistance such as, if you would like to submit in writing your cogent arguments, and if you'd like to attach a petition with the signatures, and a map showing, you know, who supports, et cetera, but those are the kinds of things that the council really encourages. And I know I used to say, you have this amount of time to speak. But you do not need to take the entire time. In fact, the council would appreciate it if you would just get to the point. And I think that the council also has the ability, either through the rules committee or through the chair, to say, on certain items, that they will -- with the vote of the council majority, that they will expand or contract the length of time. We had an enormous amount of people who wished to speak, given that fact, we are going to limit the time to this amount.
>> Ed Rast: Dan McFadden and Brenda. I'm sorry Dan Pulcrano.
>> Dan Pulcrano: Since I'm here as a representative of a business group I could make an argument that merchants associations, downtown associations and others be included in this, and the ACLU and NAACP also be given time to speak since they represent organized interests as well. But I won't. I think that -- [laughter]
>> Dan Pulcrano: Basically I think we should reject this recommendation that any class of interests be given preferential treatment. And leave it to the discretion of the mayor to extend the time on subjects that warrant it. So I'm making a motion that we reject this reform.
>> Second the motion.
>> Ed Rast: There's a second. Brenda do you have a comment?
>> Brenda Otey: Oh, yeah. First of all, I have -- I think that whatever comes out should be consistent. And I'm not so trusting of putting it in the hand of one individual to say that, okay, on this -- in this case, we'll expand the time as opposed to this case, we'll limit the time, because that also puts that person in the position of power to limit discussion and limit the information that comes out. My question is, is this specifically for when it's an issue that's on the agenda, that they get the four minutes? Or would this also impact the time that people have under the open part of the meeting, when you can come up and talk about any item that's on the meeting? and the -- and I definitely disagree with the -- having it be specific to particular parties. Because it does seem like you then develop an exclusive club.
>> Ed Rast: We have a motion on the floor. Discussion.
>> I need a clarification. Staff is not making a recommendation on this particular proposal. City Council is still following their current practice.
>> Ed Rast: Right.
>> Once this staff reviewed the best practices of cities, we provided that recommendation as part of the matrix. And it's really up to the task force now to deliberate this when it comes under the public meeting section. Because there is a section within public meetings that you'll have an opportunity to have a full discussion on this item.
>> We've got a motion to reject it. Let's get clarity on it.
>> Ed Rast: We have a motion, we're having discussion on it. I missed Bob Brownstein.
>> Bob Brownstein: I think this is the wrong way to fix the problem but I do think there's a problem. You can't say anything significant in two minutes. When we get to the public meeting section I'll have a different idea on how to deal with that.
>> Ed Rast: Ken Podgorsek.
>> Ken Podgorsek: I'm going to go along with the motion for similar reasons Bob just stated. I do want to make a point. There is an inequity in the current system and the inequity needs to be fixed. This is not the right fix. For the various issues that have already been fixed. But there is an inequity. It gives the public at large the impression that they already come in one leg down, when they're there to discuss the public's

business.
>> Ed Rast: Let me make a comment also. I agree with Ken Podgorsek's comment on it. I would also agree that we should reject this but come back and discuss it in the public meeting section. In many cases, when a developer or an eminent domain action or the city has taken an action and they make their presentation and it goes on for a long time, and because of questions, it can go on for ten or 20 minutes. Then the organizations that are representing the residents in this particular area, for instance, neighborhood associations are then restricted to the two minutes, it is in my view just grossly unfair. Additionally, in many cases, you have volunteers who are working on this, from the neighborhood associations, and they have very limited expertise. Then what you'll do, I'll do two minutes, Ken will do two minutes, Dan will do two minutes. That is not an effective way of doing it. You can go back to the free speech First Amendment issues and I think actually that if somebody wanted to challenge the way it's done right now, I think there would be a decent challenge there. Because you're giving the other side, whichever side that is, unfair opportunity. And you are restricting dramatically the people who are going to be impacted by this from their ability to express it, especially having a representative who is the expert in the area is restricted to two minutes. And then you kind of mumble your way through with the rest of the people. And I've had the opportunity a couple of times to trying to bring them up to speed. You got to say this and this and what does that mean? And it's really difficult at times. So Margie.
>> Margie Matthews: I'm just asking what the motion is, to reject what?
>> Ed Rast: Repeat the motion and basically the motion was to reject --
>> To reject the proposal to extend the time for neighborhood groups. To double the time for neighborhood groups.
>> Ed Rast: Let me make a clarification to the motion-maker and the second. Would you give a reason why this was rejected potentially? Would you add, amend it to say the reason then we will -- to outright reject it gives the wrong message, what we're trying to do is come back around.
>> I'm fully comfortable with entertaining another motion in the appropriate time. But I think we had should reject this proposal and then entertain new ones. That's fine.
>> Virginia Holtz: Virginia Holtz. The attorney said we would come back layer with another proposal.
>> Ed Rast: Call can question, all in favor, all opposes, an senses, it passes. We'll come back and bring it up in the public meeting section. Government reform public accountability number 3. Bob Brownstein.
>> Bob Brownstein: This should be considered in the other package, 4 and 11.
>> Ed Rast: Makes sense. We have a consensus on that. Any further discussion? Dan Pulcrano.
>> Dan Pulcrano: My thinking on this is, this is like the prior one, where we wanted to go a little bit further but we're okay with what's there. So my feeling is, we can say we endorse what staff has done so far and we would like to make additional recommendations. Is that okay with everyone?
>> Ken Podgorsek: Point of clarification. Ken Podgorsek. When we are through with this we're going to have to make a sweeping motion for all those sections we're doing that with.
>> Ed Rast: Government accountability reform 4. We did 3.
>> Ken Podgorsek: This is page 8 again.
>> Ed Rast: This is the next page. Government accountability 4 is require every staff memo to have a city staff contact for public questions.
>> Virginia Holtz: It's already completed, happened. Let's move on.
>> Shall we endorse it? [laughter]
>> We should discuss it.
>> Ed Rast: Public information reform number 2, establish single master calendar. We already -- we've already discussed this and recommended forward.

>> Ken Podgorsek: We had one -- that was one of the early --
>> Ed Rast: One of the very first ones.
>> So we've endorsed this.
>> Ed Rast: Question, do we want to bring this up at the study session?
>> No.
>> Ed Rast: Okay, fine.
>> Ken Podgorsek: Even says at the very bottom, the Sunshine Reform Task Force reviewed and endorsed on August 3rd. That's nice to know that we actually did do something in August.
>> Ed Rast: All right. So I think what we -- comment was paid that we need a motion for all of these.
>> Ken Podgorsek: We need a sweeping motion. Dave had put a motion, and withdrew it earlier. I'm wondering if he's willing to restate his motion. You remember that, way, way back.
>> Ed Rast: Dave had a motion basically a sweeping motion that he was going to recommend that this, you know, these be sent forward with exception of some of the ones that we were going to come back to and discuss.
>> Dave Zenker: Dave Zenker. I've lost track with what we've pulled off. I've love to do that. If somebody has been keeping track.
>> Lisa Herrick. I've kept track. You've gone through each section pretty systematically. I'm not sure you want a sweeping motion. If you want one, go for it but I think we can reflect what the task force has agreed on.
>> Maybe should the notion be that we pass these comments on to the council?
>> I think you've done that all along so --
>> Ed Rast: All right. So we've completed agenda item 4 and then agenda item 5, public meetings. Our favorite one. Lisa and Ed, if I remember correctly we were going to go back over and talk about the ancillary, or did --
>> Definitions, right?
>> Lisa Herrick, yes the definitions are on the agenda for today. And I think Sheila distributed some documents that gives the revisions, there are a few things. Some definitions have actually reflected the task force's work. Some are new to the task force and relate to some efforts by Mr. Davis and me.
>> Ed Rast: Okay, so is everybody on the same page what it is, Sunshine Reform Task Force, reinvitationed definitions, looks like this. Everybody's on the same page. All right. Ed Davis.
>> Ed Davis: As Lisa said, she and I worked on these differentiations together. And there are some parts of it that we could not come to an agreement. So I don't know at what stage you would like me to let you know my concerns about some of the language of the definitions. They're not extensive but --
>> Ed Rast: Right now, why don't we go through it and, Ed you want to lead, which one wants to lead and make the comments?
>> Ed Davis: It is probably easier for me to lead. The definition are written out. I could mention things.
>> Ed Rast: Lisa.
>> Quick clarification for Mr. Davis. Do you want to start with agenda, if you don't have any comments about that then the task force could review it. Move on kind of orderly.
>> Ed Rast: Go sequentially through it, right. Ed. Oh, from the audience.
>> Yes, I just would like to have a chance to comment on the -- on several of the definitions and I don't know how you want to accommodate public comment on the definitions. If you want to do it on the end or separately when they come up.. There are a number of want to comment on.
>> Mr. Chair, let's do it as they come up.
>> Ed Rast: We'll complete the task force discussion, raise your hand and we'll have you come up and

discuss. All right, Ed you're going to lead off and then Lisa will comment and we'll go to the task force and we'll check and see if the public has a comment.
>> Ed Davis: The definitions for agenda, Lisa and I have persuade much agreed on. I have no comments with respect to that particular definition. I do have some concerns about some of the definitions for agenda packet. Particularly, item A which talks about the last phrase there, if and when the negotiators have finished negotiating the terms. I think it probably is easier, in a lot of these definitions, to simply make it clear that if documents are otherwise protected against disclosure by some other part of the ordinance, that that governs, rather than putting in phrases like, if and when negotiators have finished negotiating the terms. Similar concern with item B. That says as soon as it becomes final. I can tell you that with respect to the public records act, definitions that talk about if and when something becomes final, or something similar to that, are problematic. And I would suggest that this, the last language, as soon as it becomes final, be eliminated, with both B and C. Because that's just going -- it may even encourage people to distribute documents and then say, well, it's not final. And that has happened more than once in litigation involving public records. In A, B and C, I would suggest the phrases after the commas be eliminated with respect of all three of those.
>> Ed Rast: If and when negotiating the terms be struck and on B as soon as it becomes final be struck and on C as soon as it become final is struck?
>> Ed Davis: That's correct. D I have no trouble with, because that is a protection you get when you're not disclosing something in the agenda packet that is otherwise protected from disclosure.
>> Ed Rast: All right.
>> Ed Davis: And then E, I have to problem with it. I point out you might want to discuss the particular page length. The page length here is more than ten pages. And you should get comfortable that that's the right number of pages with respect to agenda packet. That is my comments about agenda packet.
>> Ed Rast: Lisa.
>> Lisa Herrick. I'm going to try to explain the thinking behind --
>> Ed Rast: A, B and C?
>>-- some of these phrases, clauses, A, B and C. Other staff may have comment since they are -- they deal with the practical realities of all of this more than I do. But I'll just point out, one concern that we have is that the agenda certainly gives notice of, let's just focus on a contract, for example. If a contract is going to be entered into it needs to be noticed on the agenda. The -- and as a practical matter I think we do that, we've talked about this before, it's like 13 days in advance many times. And there may be staff memos talking about the contract, and those are finished and distributed. But the contract per se may be negotiated up to the 11th hour, and so to the -- to require the contract to be made available, because later on you'll get to sections where the agenda packet needs to be -- and I think we talked about this a little bit on Thursday -- where the agenda packet needs to be, in its entirety, needs to be made available ten days before the meeting, it is going to require -- it will basically essentially delay the City's business. And so unfortunately, while people would love to finish the negotiation of contracts as quickly as possible, as a practical reality my understanding and my experience is that that may not happen. And it's not -- the foe to the public that the contract is going to be discussed has been made --
>> Okay, I think I understand.
>> Let me finish, thanks. So because the notice on the agenda, public has information that it's going to be discussed and the actual negotiated contract just may not be finished.
>> Mr. Davis do you have a solution to accommodate that? If the contract isn't available, should -- I mean, do you interpret this as all the contracts that are available, as of the date, have to be included or the item cannot go forward without the contract?

>> This issue is why definitions affect also the practical aspects, for example, closed meetings. And what is appropriate to consider. From what I understand, Lisa is saying that under this provision, the -- perhaps a very significant contract could be not disclosed, until the day before the meeting. And is that something that you want to permit? I know in the discussion, and I was going to mention later on this afternoon, when I talked about closed sessions, one of the big issues is, contracts. And how much should be done in closed session, and how much public input should be permitted with respect to contracts. So I think the part of the ordinance that says if not otherwise required by law, if it can be withheld, and generally drafts and contracts that are not completed, can be withheld. So you don't need that particular language. But you should think about whether or not you want to allow them to put contracts up at the very last minute.
>> Ed Rast: Susan.
>> Susan Goldberg: My concern really is this kind of language will be used to create a loophole, or could be used as a way to create loopholes. And so you could end up having last-minute disclosure as we have seen her and under B and C nothing ever becomes final, and we've also seen that. I mean, I guess one of the things I always come back to is, well, if it isn't finished, and it isn't part of the agenda packet, then delay the action.
>> Ed Rast: Right.
>> Susan Goldberg: And that there are very few things, very few things that can't be delayed. I mean, easily the grand prix thing could have been delayed so the public could have learned about it for all of the hand wringing by the grand prix people that it couldn't be delayed. In fact of course it could have.
>> Ed Rast: Sheila had a declaration.
>> Sheila tucker City Manager's office. The requested vendor and the request that the council approve the City Manager's authority to negotiate the contract, so you know, to the extent that you know, that would -- these recommendations would prevent that from happening, I just think that's a practical consideration because that happens very frequently.
>> Ed Rast: Ken, Margie and Karl.
>> Ken Podgorsek: Ken Podgorsek. I want to echo Susan's point. Very, very few things will need to be done in a city that can't wait two weeks. And if you don't have the final negotiation on a contract, and you don't have the ability to bring that contract out in the public, the public can't be an active participant in that. If it shows up the day before the meeting or an hour before the meeting the public can't be an active participant. There is provisions in the law for emergencies or for situations where you can't wait two weeks. But it's a narrow set of provisions but most people would look at them and agree that these are issues that we cannot afford to wait on. Picking on the grand prix as we would like to a lot in here. A grand prix is an example of an item that most certainly could have waited two weeks. The outcome probably wouldn't have changed if it had waited two weeks but the public would have had an opportunity to review the contract, make comments and be active participant.
>> Ed Rast: Margie.
>> Margie Matthews: Contracts can't be negotiate by councilmembers, that's the first thing. They don't negotiate contracts, it's the administration that does it. Certainly can't be done with 11 participants at the council meeting. Let's get real about this. It was my experience that the proposed contractor, proposed agreement would come before the council to get conceptual approval on all the points. And then the art of actually finalizing the negotiate contract was delegated to the City Manager as Sheila said and then it could come back. And isn't there always a two-week noticing on they resolution of the council? There's always two weeks after that before any of these things become final. That's what I thought happened. Every council meetings had the whole list of things that had been done two weeks before. Is that not still happening? The final reading? There was always first reading, council voted on the concept,

the was the final, and then the final reading was read two weeks later.
>> Ed Rast: Dan McFadden.
>> I yield my time.
>> Dan McFadden: Part of what we're circling around is the concept of final. If you have a contract and it is signed, when is something not final? Let's say the building that was coming in and they had a deal but it came apart, so they still want to talk some more. Is that final or not final? Most of these things are not as neat as you envision them, the negotiations. I'm sure Ed is familiar with, there's tweaking at the end. Some things are time sensitive. But this concept of final we're going to to struggle with a little bit. I think Margie what you're talking about is an ordinance, where you have a first reading, second reading. But on a contract, if it's approved, it's done.
>> Ed Rast: Is there way we could make a motion that would indicate the consensus of the task force, the documents should not be going to council until the public has an idea to be able to look at it, the ten dash day point, in other words if they don't have the draft available at the ten-day point it ought to be deferred until the next meeting. Otherwise you've got this huge loophole that people at some time are going to run things through. I think this is the overall concept of what we want. These things should not be coming forward on an agenda item unless they're at the reasonable format that the public can review. Bob Brownstein.
>> Bob Brownstein: This is a tricky one, everyone can think of examples where it could be abused where there's no reason you couldn't delay it to get all the information, but you can also envision, you know, a couple of hairy competitive negotiating things where San José and San Francisco are both negotiating to get the big solar energy complex and it's going down to the wire and you don't want San José to lose because we had to delay it two weeks because we couldn't say it's going to be on the agenda and we'll try and get the final details. So let me offer a potential solution. Which is, for the council to -- and the city to have the ability to do what they've got down here as wait until negotiations are finished, negotiating terms, they have to get that -- they have to make the case for that ahead of time. In other words, they have to say, okay, we're negotiating to deal for the solar energy complex. We think this is one of those rare ones where we may have to go down to the wire, and ahead of time they have to vote in public session to say it's a special one and we want to be able to not have the standard rule where if we don't have the details in time we have to delay it. The second point I would like to make is, there is an area, a kind of negotiations where I think you can have very serious consequences if you don't manage to get it in on time and that's labor negotiations. If you put it on the agenda and negotiating day and night to try to get a deal and you don't get a deal, or you get a deal but you can't go forward because you haven't public indicately indicated all the details, you can't have the employees out on the streets the next day, because you haven't negotiated because of delays.
>> Ed Rast: These are things that occur over three or four weeks, most of them.
>> I would think so.
>> Ed Rast: What your proposal is if they see this is coming up then what they do is at one of the prior council sessions, they agendize the item, they discuss that this is an important thing that they may have to move quickly on for negotiation, whatever, and then they vote upon that they will make an exception to the agenda rule, and they will bring forward, at that point we have an idea what's going on. Was that kind of away you were saying?
>> Bob Brownstein: That is exactly what I'm saying.
>> Ed Rast: James Chadwick. Public comment.
>> James Chadwick. Just to address this issue of the timing of disclosure. One of the fundamental things that people consistently express frustration about is getting sand bagged by late disclosure. Whether it's

contracts, whether it's council memos, whether it's staff's memos. There are going to be hardly any circumstances, if any, where information can't be provided to the public. One of the things that changing the rules like this does is it allows people to conform their conduct, because they know what the rules are. There once was no Brown Act. There once was no public records act. And nobody had to worry about these things. Once the rules are there and they're clear, the process changes to accommodate them. It's not you don't have the situation where people are constantly running in with emergencies because they know what they have to do. With all due respect, the situation of providing an out for the City Council that any time it wants to delay this process and make disclosures the day before or the day of a meeting, that can just easily turn into a rubber stamp. You know, any time they've got something coming up they don't want to disclose to the public, they have a two-minute discussion about it, they rubber stamp it and it's done. With respect to labor negotiations, there's already a provision for an emergency meeting if there's going to be a work stoppage. They can address the issue in a emergency meeting if they have to. Most labor contracts are not something that have to be disclosed only 24 hours before a meeting. The changes that were made to this from prior versions and these exceptions for documents only being disclosed after they become final or after negotiations have been completed would really take the heart out of this provision.
>> Ed Rast: I think Dan Pulcrano had a clarification.
>> I have a question. Either Mr. Chadwick or maybe Mr. McFadden might be able to answer this one. And I think the intent of this is to get the material contract provisions out in the public's view such as if labor you know, has negotiate a, you know, $10 an hour raise for the police force, or if, you know, the amount of the subbed did I to organization X, Y, Z. But correct me if I'm wrong, a huge portion of every contract is boilerplate. It is insurance contracts, indemnifications, headings are not material and et cetera. Does it serve the public interest to again and again copy boilerplate, or sit important that the business points, the material points of that agreement come before the council? So that's the question I want to ask. Maybe Ed and then --
>> Ed Rast: Ed Davis.
>> Ed Davis: Let me point out we may be losing sight of a criminal point here. Documents that are designed to be distributed to the council for some particular reason. And it's interesting with the language the task force is suggest, for instance a report of an outside consultant. Why would you distributing the contents of a report of an outside consultant if it's not final? Shouldn't that be something the public should see? When you are looking at that in that context, we're looking at documents that are important enough for the council to consider. And if they're important enough for council to consider, even if they're not final, in my view, they're important enough for the public to see, as well. With the exception of those situations that are covered later on, or will be discussing later on in the ordinance, where secrecy is necessary. And if secrecy is necessary, that's captured in section D. Material exempt from public disclosure. So I see the inclusion of words like when it becomes final, or finishing negotiations, really undercut the reasons why you need to get these to the governing board, the policy bodies, if you will. So I think we -- section D will protect those situation where exemption from disclosure is appropriate. And there's no reason to have the language in there about becoming final. It's just going to cause a lot of squabbling.
>> Ed Rast: Dan McFadden.
>> Dan McFadden: Dan McFadden. Labor relations, you have an ongoing oral contract. You're getting striction and you're going in and meeting the labor team. And you're conferring in good faith. You're bargaining in good faith and you're working this along incrementally. It is a different kind of negotiation, and you don't all of a sudden produce a contract and the council goes off in a different direction. It is incrementally built and built on this oral agreement that you're discussing. Labor negotiations are a little

different and you need to be sensitive of that. Why do you need to be sensitive? If you pin down everything the council could possibly do to possibly outsmart you or slip by, you're going to have such an extreme model here, it creates tension. If it gets so exteme as I think it was voiced here. It's so unworkable. It's not going to last long, if it gets passed at all, it's going to create so many problems. You have to create flexibility here.
>> Ed Rast: Dan Pulcrano.
>> Dan Pulcrano: I don't think I got an answer to my question here. First of all, does the full text of any contract, it says any contract that may be entered into, has to be included in the agenda.
>> Dan McFadden: Let me try to comment on that. Then the attorneys might want to contract. Many times the contracts are done weeks, months later from the action, taking on the basic business points, okay? When the council takes action, many times the contract is not finished. It's not done.
>> Ed Rast: Bob Brownstein and then we'll have public comment.
>> Bob Brownstein: First, on B and C, I don't see any reason why we shouldn't require that what gets brought to the council is the final document. I'm concerned about A. And I'm not approaching it from the perspective that on any Tuesday, the council can say whoops, we're going to make an exception. I'm concerned about, I don't agree with that, and I think in terms of Mr. Chadwick's comments that people can address the procedures is quite true, when the city is the driver of the negotiations. The problem is, the city isn't always the driver of the negotiations. Sometimes, the city is negotiating with some other entity that is the driver. The other entity can pass the cards, and the city is desperately trying to come up with something that gets the other entity to do what the city wants. And that is often a competitive situation. And it is sometimes a very high-stakes situation, particularly for a city that has a weak tax base, like San José. Now, in that what I consider that to be a rare occurrence, I don't think it's unreasonable to ask the city, let the City Council, weeks ahead of time, not on the Tuesday, but weeks ahead of time to have a public meeting and fully noticed, all the documents ahead of time and say look, we think we can get something really valuable for the city, it's going to go down to the wire and we want the chance to be able to negotiate up 'til midnight on Monday any chance to get it. And all of us will have a chance to say, bull, that's the grand prix, there is month reason you should want that right, and we disagree and we can ask the council to vote no, or we can say, holy could you, this could make San José the energy capital of the United States and it's worth negotiating until midnight in order to get it.
>> Ed Rast: Do you have some recommendations, what we have here is a very general statement.
>> Bob Brownstein: What I'd do is add a sentence here or a sentence in a an exception place, that says the city has the capacity, and give it a healthy deadline, four weeks ahead of time, whatever it is, to bring in public session a motion forward to get the right to negotiate the final details down to the wire.
>> Ed Rast: Okay, I think --
>> Bob Brownstein: And I would refer it to the drafting committee, I'm not the lawyer.
>> Ed Rast: Public comment, Ken Podgorsek then Ed Davis.
>> Bob Brownstein: I think you understand.
>> I think I do.
>> Ed Rast: James Chadwick.
>> Thank you, James Chadwick. I don't think this is complicated or requires a lot of detail. The language is straightforward. What we want to make sure is the public sees the document on which the City Council is going to take action, before the meeting. And sufficiently in advance of the meeting that it actually has a meaningful opportunity to comment. You know, if there's a negotiation going on up until midnight of Monday, and there's a City Council meeting on Tuesday, it's questionable that even the City Council's going to have a meaningful opportunity to understand that contract, what it means, what it says. This

doesn't interfere with the ability of the city to negotiate. All those negotiations go on in closed session. That will still be permitted. All it says is, once they're done, then there has to be adequate time for them and indeed the City Council itself to look at that time and make sense of it.
>> Ed Rast: Okay, I think we -- Ken Podgorsek then Ed Davis.
>> Ken Podgorsek: Ken Podgorsek. I could back the concept of -- the rare -- of the City Council having a power to do a rare exception. My concern would be, though, is that it could become a routine item. And one of the ways it would become a routine item is if that exception is allowed to be agendized as a consent calendar item. Which only people that are really into, you know, how city functions work, understand that items on consent calendars can be very, very large but they're carried with one sweeping motion. I could probably endorse that exception if that exception was required to possibly be heard under the public hearing section, rather than -- so it's actually itemized out and dealt with as a single item and could not be put into a sweeping motion.
>> Ed Rast: Ed Davis.
>> Ed Davis: I just want to make sure I understand a point of clarification that Bob raised. Because I don't think it's the intent of anyone here to do something that would jeopardize a labor negotiations. Is it an example that a policy body be sent for their consideration something that would intact labor negotiations? Because this just affects documents that are in the agenda packet, documents that the council is going to consider. I'm not sure I see the connection of what goes in an agenda packet and how that would then interfere with labor negotiations up to the last minute. So if -- if there are occasions where such documents end up at the policy body, that would efficient labor negotiations, then yeah, we can build in an exemption for those particular documents.
>> Ed, could I respond --
>> Ed Rast: Dan McFadden.
>> Dan McFadden: Dan McFadden, City Manager's office. If our practice stays the same, the City Council doesn't see contracts, right, they don't go forward. The only people really interested in contracts are paid staff, lobbyists or attorneys or whatever, you know? So those don't -- they're not in here. My question is, whether we're going to stay with the accepted practice now or we're going to change that, and say somewhere else in here, contracts have to go forward as part of the package. Because we did have that discussion when we talked about documents at one point.
>> As I read the way this definition is drafted, is that it doesn't require something that would not otherwise have gone before the policy body now to go to that. What it requires is, if it's the intent to put it before the policy body, then it's got to be in the agenda packet. Unless there is some exception for that. So as I understand your concern, Dan, it's not going to require setting things before the policy body, or the council, that weren't before submitted to them.
>> Because we distill to the business points, to the deal points. And nothing would be gained by sending a hard copy of the contracts.
>> And this doesn't require it if it's not already done. And I think that goes to Dan's point that you know, what the public wants to know is what the council or the policy body is considering, what's before it. And that's all the agenda packet definition does. And if the council is considering a draft, or something that's not final, then whether it's a contract or an outside consultant always report or a memorandum by staff, the fact that it's final does not make it any less important to the public. In fact it might be of even more importance if something that is not final that goes to the council, and the council talks about it and says, you know, well, I think you ought to change this. And let me give you an example. It is in several occasions I have found where an outside consultant has prepared a report. And that report then went to policy makers, and they didn't like the conclusions or some of the findings that the outside consultant was

made. So the outside consultant modified the recommendations and said this is the report. It would have been interesting that the, quote, draft report that the policy members essentially told the outside consultant to change. And that's why this language, when I first read this, that the back of my hair stood up a little bit, or the hair on the back of my neck stood up a little bit, because whenever I see the word final, there is room in there to create problems.
>> Ed Rast: Okay, Susan Goldberg.
>> Susan Goldberg: I think that's a good point. If it's good enough for our elected officials to be talking about this stuff and considering this stuff at their public meetings it is certainly good enough for the public to get full information as to what they're talking about. And the other point is, people want to participate, when there's an opportunity for their participation to make a difference. And if something is not got all of the I's dotted and T's crossed, it is even a better opportunity for the public to affect the process. I would hate to see us adopting something that will allow people to continue to kind of make decisions behind closed doors without letting in the public and these things do concern me because I think they will create those loopholes.
>> Ed Rast: Bob Brownstein.
>> Bob Brownstein: I'm trying to understand Ed's last point. Because the way I read subparagraph A, it says any contract that may be entered into by the city as a result of action by the policy body. So in other words, if you put on the agenda approve contract with the solar energy consortium for bringing 4 gazillion dollars worth of investment into San José, that's a contract that may be entered into as a result of the policy body, and that may have to be in the agenda packet which is distributed ten days early, if you want to be able to make the decision on that Tuesday and if you want to negotiate until Monday night you wouldn't be able to have the council make the decision. But I am very sensitive to the argument that you should not create things for extraordinary situations that are then used for ordinary situations. So I would be comfortable with something that says look, make sure that the city treats this as extraordinary, we tell them how many times they can do it in a year, say fine, okay. What we mean by extraordinary is, you get to do this two times in a year.
>> So we get two grand prixes every year?
>> Bob Brownstein: My point is, you have to have a public meeting weeks ahead of time, to say this is why it should be one of the two, and I'd like to see the character who says, I want to bring grand prix forward as one of the two.
>> Ed Rast: Administrative announcement. We are at 12:18, okay? And we have lunch coming up and then we have the City Attorney going to make a presentation right in the afternoon. So we might want to consider either one of two things, trying to wrap this up and make a motion and move forward, or we would probably defer it. The next speaker is Dan Pulcrano then it's Lisa and then it's Margie.
>> Dan Pulcrano: Mr. Chair, I have encapsulated the comments into a resolution I'd like to propose as a motion. Basically everything on this page, definitions, agenda page one of four with the following changes. The first is that at the top, at the end of the agenda definition, just add the words in the end, "in order to provide opportunity for the public to participate in the process." Just stating clearly the reason is to facilitate public participation. The second is, in section A, rather than say that any contract that may be entered into, reflecting commissioner Goldberg's comment that any document that goes before the body. So the wording would be, we would eliminate the wording that says may be entered into by the city as a result of action by, those words would be replaced by, that is submitted to the policy body for approval. Any document that's submitted to the policy body for approval. The third change is to A, B and C, which is to remove the clauses after the commas, after the end of each of those sections. And the fourth revision is in item E, to increase the size of the document from ten to 15 pages. So that any

document longer than 15 pages, and as far as I'm concerned it could be 20. Because the two-sided copying it's fairly easy to do. But any document greater than 15 pages would be available for inspection. And that's my motion.
>> Ed Rast: Do we have a second?
>> Bobbie Fischler: Second.
>> Ed Rast: Bobbie seconded. Margie and Virginia and Brenda.
>> Margie Matthews: I'm supportive of the motion for the reason, we have a lot of go-round here. If the contract is not available, then it's not a contract, it is a staff motion that gives direction to staff to A, B, C, D. I think we're fighting about something we don't need to be. If it's a contract, it could be a conceptual approval, all the points have to be there. But to say that every single contract that the city does have to be approved buy policy body, there are thousands of them. If the contract did is not there, all this is saying is this can be in the packet. Sometimes it is a contract, sometimes it is negotiation, sometimes it's direction to staff. Sometimes it's study thing. I'm fine with the motion. I do want to point out because it's important I think that we understand this, a council memo is not part of the agenda packet. The councilmembers come from the policy body. The agenda packet's being presented to the policy body for their action. I want to make sure that we kind of agree on that.
>> Ed Rast: Virginia then --
>> Virginia Holtz: Mine is a question. Virginia Holtz. The actual language for A where you supplanted some information there, but I don't know, it's jury second bullet point, that says that it's submitted to the policy body for approval, did you put a period at the end of that, or were you including the phrase, "if and when the negotiators were finished negotiating "?
>> Ed Rast: No, that was struck.
>> Virginia Holtz: Did you say that was struck ago well?
>> If you take a pen to A, and, cross you out everything from may, through action by. And then in the -- of course remove the entire clause after the comma.
>> Virginia Holtz: That was my question.
>> Those are both being removed. And the replacement wording for the first removed clause is, that is submitted to.
>> Ed Rast: Continues the policy body.
>> The policy body words stay in. The words "that is submitted to the policy body --"
>> Period.
>> Not period. Let me give a complete reading. The agenda packet must include A, my contract agreement letter of intent or memorandum of understanding including any amendment or modification thereto that is submitted to the policy body for approval.
>> Ed Rast: Bob Brownstein.
>> Bob Brownstein: I just want to get clarification. Dan, the intent of your proposal is the closing off of negotiating to midnight before Tuesday? Because this stuff has to be in ten days ahead of time.
>> Dan Pulcrano: I believe that's the case, yes.
>> It wouldn't be a contract in that case, it would be direction to staff. Or delegation to staff to negotiate. And that would have been done ten days before.
>> Bob Brownstein: No, I understand that. Sometime earlier could be months earlier, staff has been asked to negotiate. In the circumstance where the negotiations are not complete ten days before the council meeting , do we want to give staff the ability to try and negotiate round the clock to get a deal by Tuesday? My understanding from Dan is that you don't want to give staff that capacity. And I just want to be clear on it.

>> Dan Pulcrano: The negotiating deadline is now ten days before Tuesday.
>> Margie Matthews: Then I withdraw my support for that.
>> Bob Brownstein: I think in a year or so, we will regret that, if it happens, and the problem is, it's when you regret it, it's a big regret.
>> Ed Rast: Okay, so Virginia had a comment then Brenda then Karl.
>> Virginia Holtz: I understand Bob Brownstein had some additional language that he thought could clarify some extenuating circumstances, and I'm wondering if you would care to add an amendment to Dan Pulcrano's motion to include that.
>> Ed Rast: Are you clarifying?
>> Ed Davis: The way we can do that without amending the motion, as I mentioned earlier, if there are going to be exceptions to the things that are included in the agenda packet as to what has to be placed in them pursuant to section D, we can take that up to what has to be begin to the public. I think that's the best way to do it. Because I have some -- I think what he says makes sense, if this is going to prevent, you know, last-minute negotiations.
>> Ed Rast: Either inside or outside.
>> Ed Davis: We have to think about that carefully.
>> Ed Rast: Virginia and then Brenda. Virginia's fished. Brenda.
>> Brenda Otey: I have two questions on the first paragraph under agenda, I would be interested to see how it would read, as far as the words, wording that you are proposing to add onto the end of it. And on the second -- second question that I have is, on the number of pages, ten seems like it might not be that many pages, unless it's a document that a lot of people are requesting. Then that may provide an inordinate burden on the city as far as duplication. Excuse me, one more thing, I did have a third one. Exemption, as far as if there's going to be something added, that puts forth exemption that it would be noted or referred to under section A so people would know to go to another section to know what the exemptions were.
>> Ed Rast: Dan, would you read -- the definition of agenda and everything after, you know, start with each item and then continue on, as you had.
>> Dan Pulcrano: Okay, the paragraph, I don't think I need to read what's there. It says, agenda means, and then it defines it. And then the last clause is simply to state the purpose. In order to provide the public with the opportunity to participate in a deliberative process. And I think Mr. Chadwick has a question.
>> Ed Rast: Let me go -- yeah, Mr. Chadwick. Public comment, and then we'll do Dan.
>> Okay. I just a questions on language. It's maybe directed at Davis. Documents intended to be distribute to a policy body, and then under B it says any memorandum prepared by city staff pertaining to a matter to be considered by a policy body. I don't know if they're the same things, I don't know if I'm misreading them, but they don't appear to be the same. The other thing, a holder here, the council staff have to determine when things are final. I don't know any other way if somebody from outside the room or someplace else who doesn't work can say that something's time. We're going to be on the opposite sides of that, but it's a place holder because it will come up with council.
>> Ed Rast: Mr. Chadwick.
>> I was going to ask for a point of clarification or Mr. Pulcrano's definition of documents that are submitted to the policy body for approval. If -- Mr. McFadden suggest that normally it's only sort of a list of you know, headers of business items that are actually submitted to City Council. The contract itself, the document that's actually been approved as a result of the council action, may or may not be submitted to the City Council. Is the contract itself then not part of the agenda packet, is it only the list of bullet items or is it everything?

>> I don't think I said everything. There is an analysis cost benefit all that material. But it deals with the deal points, the substance, okay, not the form of the agreement.
>> Is the agreement provided to the City Council as well, along with that analysis?
>> Normally not.
>> That's my concern, that the agreement itself, not suggesting anybody's doing anything untoward. There may be things that the public considers to be very important that the council doesn't. That is why I think it needs to be clear that it is the contract that the public can get or just the deal points. I would appreciate clarification of that. On the point of the length of document that's provided, if each day and age if the entire document is available online and downloadable, that's probably enough to address most people's concerns. As long as they can get the whole document somewhere without having to come down to City Hall during business hours.
>> Ed Rast: I think where we were was Brenda and Karl. And we're still -- we're at 12:30. It's --
>> We can't eat while we --
>> Ed Rast: Fine.
>> Shut the TV off.
>> Ed Rast: Take a break for a couple of minutes. We're not going to appear real interesting on television eating while we talk but we'll --
>> Well, that assumes we appear interesting eating or not eating.
>> Ed Rast: Try not to chew and talk. [recess]
>> May I ask a point of order? Is in a requirement that we have a representative from the city attorney's office in this meeting since it is a noticed Brown Act kind of meeting?
>> I just try to call up there to find out where they are. So I don't know --
>> I would feel more comfortable if we did that. Just think probably pretty good protocol, and it might be required legally.
>> Is it all right if we finish up this motion?
>> I think in an abundance of caution we should wait.
>> Ed Rast: Since we're not back in session yet, read through it and see what you want to say.
>> Public comment meeting number 2? I got lost.
>> Ed Rast: Back on the same first page.
>> Ed I have the question. If we put this one part of the motion, we'll put the whole public meeting thing off until whatever?
>> Ed Rast: Unless something happens unusual that we get through closed session really fast, I wouldn't want to put a bet on that one, unless I was betting against it. Huh? And just as far as administrative, Susan is going to lead us through that part.
>> Susan Goldberg: I'm an expert.
>> Are we discussing in general.
>> I can find that.
>> Everything you know what the issues are.
>> Ed Rast: And go back, that makes solid sense. While we're waiting, we can talk on anything else.
>> Ed Rast: If you haven't taken a bathroom break you might want to do that. [recess]
>> Ed Rast: Sunshine Reform Task Force, the afternoon session. We had a quick discussion earlier, the initial conversation was that we were going to continue on where we were, do we want to just stop or take ten minutes to try to finish that one section up, then name the motion on the table? All right so we'll continue that then we'll move on to talking with closed session and the presenting by Rick and Ed Davis. So Dan Pulcrano had a motion on the table, and I think he has a further discussion on the motion.

>> Dan Pulcrano: Yeah.
>> Ed Davis: Can I clarify one thing?
>> Ed Rast: Ed Davis.
>> Ed Davis: I misspoke, the section A that we're talking about, based on what Dan is saying, that it would require the city to submit certain documents that in the past it has not specifically contracts. So that was -- should have caught that but I want to make it clear that in fact Dan is right, that there are things that would not otherwise by practice be before the board, now would be required to be before the board, specifically contracts.
>> Ed Rast: Dan Pulcrano.
>> Dan Pulcrano: This is one technical not material issue to this, which is the phrasing for -- that was to go at the end of the agenda section, is probably better off in a preamble to the entire section. So as opposed to attaching it in a clause at the end, Brenda actually suggested we put at the beginning. I think that's an excellent suggestion. With Bobbie's permission I would like to amend and improve the reading. Not in order, just to facilitate into a public process, and those words be incorporated into the preamble. Is that okay Bobbie?
>> Bobbie Fischler: Yes.
>> Virginia Holtz: The city does a humongous amount of contracts. I can think the parks department negotiating for maintenance and that kind of thing. That doesn't rise to the level of a city staff or City Council deliberations on it. And so I'm wondering if we would like to make a threshold of amounts of -- what that contract will provide to the service.
>> Dan Pulcrano: Virginia, our thinking was to deal with that in the public documents section as owed to --
>> Virginia Holtz: I'm just raising that so that can be included.
>> Dan Pulcrano: This solely deals with the agenda packets portion.
>> Joan Rivas-Cosby: I had to leave the meeting for a brief time. Could I hear the motion restated please?
>> Dan Pulcrano: The motion includes the preamble to facilitate public participation in the deliberative process will be incorporated in the sentence as a preamble. Under A it will read any caret agreement letter of intent or memorandum of understanding including any amendment or modification thereto that is submitted to the policy body for approval.
>> Thank you.
>> Dan Pulcrano: The second part of it is to remove under A, B and C, the language, subsequent to the commas, under E, we're increasing the threshold from ten to 15 pages. And I think that's it. That's it.
>> Ed Rast: Margie and Susan.
>> Margie Matthews: I think we're okay. Any agreement, et cetera, et cetera, that is submitted to the council. So the administration still has the ability and the council still has the ability to decide what gets submitted. Those thousands of contracts that aren't submitted now, will continue not to be submitted then. It's only when it's submitted that it has to be part of the packet.
>> Ed Rast: Susan Goldberg, I'm sorry Dan McFadden.
>> Susan Goldberg: Go right ahead.
>> Dan McFadden: Dan McFadden, City Manager's office. That was my question before and I'm still to the clear, Margie, on that point, with whether we get to make that decision as to what's submitted. My sense is that this requires anything going before council for the contract to be executed, and to be submitted as backup, am I misunderstanding that? Let me tell you, that makes no sense to me. Because the contract, unless you're working in contract law, or business law, and you can flip through and bet the

fine points out of it, it doesn't realm help you very much as part of the public. It ties us in knots.
>> Dan Pulcrano: The motion doesn't call for every contract to be submitted. It only says if you are submitting the contract to the council, then you have to provide it in the agenda packet as well.
>> Dan McFadden: Okay, that's good.
>> Dan Pulcrano: Only if the full contract comes before the body.
>> Dan McFadden: The resolution says approve the contract, okay, but we don't submit the contract.
>> Maybe we need to say approve in concept and delegation to the City Manager.
>> Dan McFadden: I should mention to you on Tuesday, the City Manager's approval threshold, since threshold is mentioned, is recommended to go to $1 million on contracts, that's on Tuesday's agenda.
>> If they approve that, contracts under 1 million no longer come to the City Council?
>> Dan McFadden: The manager is authorized to sign that without council action. Am I correct Rick?
>> City Attorney Doyle: That is in response to a grand jury recommendation. They looked at other cities, San Francisco and Los Angeles. Currently it is $100,000. It is a proposal on Tuesday's agenda to go to $1 million.
>> Ed Rast: Additional comments.
>> In that case, to clarify, if that passes, this would apply to contracts over $1 million. Then the question is, still remains, does the actual contract document, in its completed form, have to go to the council?
>> Ed Rast: Dan you can comment and then we'll go to Susan. Microphone my understanding --
>> Still have an issue with the completed contract having to be part of the packet.
>> .
>> Dan McFadden: If we have the discretion, we're not going to send the contract to the council. I don't know what they'll do with it. Most of these people are not attorneys. We wouldn't send it to them. If the recommendation says, the council approves a contract, and you don't see a contract in the packet, I didn't want any misunderstanding on it.
>> Ed Rast: Susan Goldberg.
>> Susan Goldberg: What I'm wondering is if there is a way for the people view the contract online. That not every agenda packet be burdened with these gigantic contracts. So people can understand with a couple of mouse clicks, you can see the contract that they're going to approve that people would be okay with that.
>> Can we do that in documents? In the public documents section?
>> Susan Goldberg: That would be fine.
>> You will have to amend the agenda packet, definitions here. Because as it's currently written, the contract has to -- if it's going to be put before the board for approval, the contract itself has to be submitted as part of the contract.
>> Ed Rast: Is it the intent of the task force that we want the contract coming forward or the contract points coming forward? What are we trying to get to?
>> Let's give our intent and let them handle the drafting.
>> Susan Goldberg: I think the intent is people should be able to view the contract if they want to.
>> So to kind of summarize here, the information, the documents that would normally be submitted, to the -- that are submitted, for consideration by the council, itself, need to be part of the agenda packet. The actual contract itself needs to be accessible on the Web. Does that work for you Dan?
>> It does for me. Let me check with Rick, because his office has the flow, a lot of times these contracts don't get approved or executed for 30 days later. What this would be required to do is have the contract drafted and posted at the same time that this is going into the agenda packet that's going out.
>> Ed Rast: Rick Doyle and Bob Brownstein.

>> City Attorney Doyle: We frequently do provide the council with a copy of the contract. The practice over the last four years has been, at least constant contracts go up to the 18th floor for their review. The problem is, is typically and I'll give you a case in point, Tuesday we have the recycle plus! contracts coming forward. We have had a long negotiating session with CWS, that was concluded on Friday. So the final contract that we had an exemplar early on but we don't have the final contract and probably won't have a signed contract until Monday. And that's just the merit of the negotiation. This is the notice for three weeks, the business terms are substantially the same. But the fine points of the contract weren't finally concluded until yesterday. The second case is our labor contracts where what happens typically in negotiations is you have a contract expiring let's say November 30th and negotiations go up to midnight of November 30th. And at the next council meeting you want that ratified. And so you don't have a lot of time, you know, to really give sufficient notice. So those are the rare examples, for the most part, the council does get significant contracts for review. It's up to the City Clerk. I mean we'd have to see if she has the ability to get those things online. If they're 500 page contracts it may be a problem. And bond contracts that Orrick Harrington does for us are --
>> Worth every penny.
>> Ed Rast: Sounds like a advertisement.
>> City Attorney Doyle: Is it practical for the clerk to put it online?
>> Ed Rast: Bob Brownstein.
>> Bob Brownstein: Let me may a suggestion. Why don't we say any staff document proposing approval of a document has to be actually in the packet. Then we could say in a later sentence, contract language itself has to be available online, and then the issue of exceptions, whether they be labor relations or the times when you need to negotiate to midnight, I think as Ed suggested, is probably best dealt with in the exceptions section, rather than in section A.
>> Ed Rast: That would be an amendment to the motion.
>> Would it address it if it said any contract terms, any contract terms?
>> Bob Brownstein: I think that says the same thing.
>> Any major contract terms?
>> Major contract terms.
>> major business terms is what you put into a report, that's what the council and public are primarily interested in.
>> Ed Rast: Bob Brownstein.
>> Bob Brownstein: I think what we're trying to get at here is the information that goes to the council ought to be the information that goes to the public.
>> I think Mr. McFadden's concern is addressed by the fact if we add the words contract terms that are submitted to the policy body.
>> Ed Rast: All right. So my understanding is, Bob Brownstein has made an amendment to the motion.
>> That we add the word terms after contract.
>> Ed Rast: Has the maker of the motion and the second approved it?
>> I do.
>> Ed Rast: Dan?
>> Dan Pulcrano: All right, that we add the word terms, any contract terms.
>> Major?
>> Margie Matthews: No no no.
>> We've covered it because if they're major enough to be submitted to the council --
>> Ed Rast: Brenda, you had a comment.

>> Brenda Otey: I had a question on section C, where it talks about reports from any outside consultant, advisory, would that be reports provided by attorneys regarding issues in closed session?
>> Ed Rast: That's covered under material exempt from public disclosure. There is a clarification and that is that currently, the city does not require its contractors or anyone else to furnish all the information in electronic format. So at some point the city ought to start doing that. Because otherwise, we'll never get -- there's going to be this exception of it's not an electronic, so we need part of the recommendation somewhere is all the documents furnished should be in electronic format. There's a hand, public comment. James Chadwick.
>> James Chadwick. Addressing the last amendment. I think Mr. Brownstein's comments is addressed by B, if staff proposes a memo that is summarized by contract, that is part of the agenda package. It doesn't need to be separately provided. You don't need the section about contract terms. If the contract is provided to the City Council then it seems to me it should be in the agenda packet. And by submitting it in contract terms, you then excuse the -- then they don't have to provide it in the agenda packet even though it has been provided to the City Council. You see my point?
>> Ed Rast: Margie.
>> Margie Matthews: The council would be asked to approve the terms and not the actual contract.
>> They may or may not is of the actual contract. And in that case, the memo from staff that summarizes the contract is covered under B, under point B in this definition. But if the City Council is provided with the contract it seems to me it should be included in the agenda packet. That's my point.
>> Ed Rast: All right. So Dan McFadden.
>> Dan McFadden: I'm sorry, I asked on the language before, and I'm still, that B, pertaining to a matter, is so broad to me, I'm not sure that that isn't going to cause us problems. If it's anything advising the council on a matter to be considered, fine. But anything pertaining to, we do a lot of staff memos. And some of them may be months old but they pertain in some nondirect way to an issue that's coming. Council. It's extremely broad and I think it's confusing.
>> Ed Rast: Margie.
>> Margie Matthews: You get a staff report and maybe there's a letter that came in from the public. It says all of that has to go into the packet and be available to the public. It's up to staff to make sure it's marked agenda such and such, that is part of the packet. Doesn't mean every informational agenda has to be attached to the agenda. It's only for a matter considered by the council on a certain date.
>> Dan McFadden: Dan McFadden. We get records request anything within a two-year period pertaining to something very broad, trails off of that and it goes and goes, okay, that's my concern here, how is this construed. If it's a common-sense approach, yes, Margie, I agree with you. If it's relevant, meaningful, yes. What are we trying to do here, I guess?
>> Ed Rast: Bob, had his hands up and then Susan.
>> Bob Brownstein: I just want to get resolution on A. The reason I suggested the modification is because as I understand it, both Mr. McFadden and Mr. Davis are both saying that the current language indicates that the packet must include the actual contract. And we're trying to get out of that situation, and saying we don't want to have every agenda packet having these monster contracts in it, for one thing, it's a dysfunctional approach. And what the council's really approval approving is a document, this is what the contract really says. This is what we want to have in the agenda packet, the staff document that says we want you to approve these contracts, we're going to approve buying ten fire engines with hoses. It doesn't have to be in the agenda packet. If somebody can, Dan or Ed, if this language doesn't say the contract has to be in the packet tell us. But right now what I'm hearing you tell me is this language says it does have to be in and that's why I'm trying to fix it.

>> I don't believe that's the case. Maybe Dan could read it. I just presented Jill with a copy.
>> Ed Rast: Dan McFadden.
>> Dan McFadden: It says any contract terms, agreement, letter of understanding, including amendment modification thereto that are submitted to the policy board for approval. So.
>> Bob Brownstein: Once it's modified with contract terms I think we're fine. It was the word that was just contract that was the problem. And that's what I'm trying to see fixed.
>> Ed Rast: What clarification question of the task force. The discussion was that would you want the contract itself to be available online. We don't state that here. Do you want to take care of that?
>> We'll take care of that in public records.
>> Ed Rast: All right, so Dave.
>> Dave Zenker: I just want to point out that I've heard two things now. The City Manager's office is saying that the City Council seldom looks at that time contracts and the city attorney's office say the contracts regularly go up to the 18th floor. [laughter]
>> Good catch.
>> City Attorney Doyle: We send them up. Whether they look at them or not --
>> Dave Zenker: The intent or the consensus here is anything going before the City Council go before the public. I agree with Susan's suggestions as long as they're there, to the public to see, just like the City Council, if they read them or not, as long as they're.
>> Ed Rast: The intent is whatever goes to the City Council for consideration, the public should have access to.
>> Yes.
>> Dave, if you're suggesting that we people the motion and want to put in a bullet point that says any other document, if you're suggesting that, I would be open to that.
>> Ed Rast: Ed Davis.
>> Ed Davis: A motion, as I understand it, a sense of what you want, I think Lisa and I understand it, in particular clarified by the last point, whatever the city, the policy body gets, then it should be in the agenda packet. So if the policy body is getting the contract, is actually getting it then the public has it. If the policy body is only getting the terms of the contract, then that's what the public will get.
>> Then we'll add that and let you take care of the language.
>> Ed Davis: And Lisa and I will draft that to conform with the change.
>> I'm okay, is the seconder?
>> Clarification, when you get, you mean have available online.
>> Ed Rast: Otherwise, the agenda packet is going to be pretty big.
>> Section E says if it's in excess of a certain number of pages --
>> Even then, we have different levels of contracts. What Dan says is a whole bunch of interest. We have a whole bunch of stuff. If you hire lifeguards in the summer you have contracts.
>> Does that require approval?
>> You don't pay lifeguards $1 million a year.
>> If you do, I'd like to be one.
>> I'm sorry, I missed that. I didn't know we had accepted the $1 million threshold.
>> We're assuming the council is going to accept the million dollar threshold.
>> Ed Rast: Clarification. What the task force indicated, they would like it available online. When you read down in section E there is no mention of that. It should be potentially added to E. One of the task force's overall considerations is, anything being available for public inspection at the clerk's office should be available online. Sometimes you can't get to the clerk's office. Consistently, every time we add availability

for inspection and copying, add in there it's available online. Which means, they also mean to change in city administration policy, that all documents submitted to the city would be electronic in format. Otherwise we'll have the giant loophole, okay? Now we've final moved on.
>> So we've amended that and we've added in the make available to the public any other document available to the policy body. Any other discussion?
>> Ed Rast: We've made an amendment, the maker of the motion and the second would basically agree that we would add in available online, on the City's Website. Any -- yes.
>> Ken Podgorsek: A point of clarification on this section. Would that be to the policy body as a whole? I'm assuming that would exclude an individual. If a constituent wrote an individual letter to one councilperson, I'm assuming, I just want to make sure we're talking about made available to the policy body as a whole through a normal city function, correct? In other words, if I sent a letter to the mayor and the City Council that would be available. If I sent a letter to my City Council person, that is not required. That's the way I would understand it but I want to make sure.
>> Ed Rast: Unless your City Council person furnished it to the entire City Council. If they dit, I would not be.
>> Ken Podgorsek: That would be fine.
>> Ed Rast: Okay. So -- yes. I think we call the question. Call the question, thank you. And Sheila, do you want to try to read it again? Or does the city staff have an indication of where we are on this?
>> I have it.
>> Those four point and the two to the right.
>> Ed Rast: The section, be available online. All in favor? Aye. Opposed? Abstentions? Passed. Thank you. And Rick is seeing the fun that we go through. Rick thank you very much for coming.
>> City Attorney Doyle: I appreciate your asking me to come. I realize your work is long and arduous. But it is for the public good. The closed session can hopefully quicker, because we have such a limited basis in which to go into closed session. What I want to do is talk about the Brown Act. The matrix in your packet, we talked about the Milpitas ordinance, San Francisco, Contra Costa, three major areas we differ, but they're certainly willing to look at and from a staff standpoint, you're obviously going to go through all this. But just as an overview, the Brown Act requires that closed sessions must be expressly authorized. So it's not -- the basic premise of the open meeting laws is meetings should be open. But here are the exceptions where you can go into closed session. There are essentially four areas where we go into closed session, litigation, personnel, labor and public policy negotiations. Public building safety, there's a threat to public buildings or security, there is some in other areas which we have -- we've not used. There is specifically for retirement plans where they are considering certain investments. But I -- generally it's limited to those four with respect to the City Council and that's what I want to talk about today, because that's my principal client in terms of who I deal with in close session. In background, we meet in closed session every Tuesday, when there's a council meeting. The meetings begin at 9:30, sometimes we move them up if we have additional items and we need more time. Those meetings go from 20 minutes to three, four hours, depending on the agenda. In the litigation context, it deals with pending or anticipated litigation. What I've done is, I've gone to the attorney general's book to sort of outline what's the purpose of going into closed session on these rare occasions. In case of litigation, it is to have a frank discussion with your attorneys about the strengths and weaknesses of a case. Clearly you've all had instances where you might have been involved in litigation and consult Wednesday a lawyer. It's a lawyer's job to sit and tell you what are the pros and cons, strengths and weaknesses, what's the upside or down side, whether you're a plaintiff or defendant. In 95% of the cases we're defendants, somebody is suing the city. We have an occasion where we initiate litigation, it's either to

recover some money that has been -- that we believe is owed us, or there have been some cases such as the tobacco litigation where we joined to seek damages to help recover damages for impacts essentially to our citizens. We have the personnel exception. The purpose is to avoid undue adversity or embarrassment. It is a I have very narrow exception. In San José it can only be exercised with respect to council appointees. At least with respect to the City Council. The City Council is the appointing authority of which we call council appointees and that's the City Manager, the City Clerk, the City Attorney, the City Auditor, the City Clerk. Some comments from Ms. Goldberg who talked about a prior case, involving the former I.T. director. And I can tell you that there was no closed session discussion with respect to that personnel matter. That was not within the purview of the City Council. The appointing authority was the City Manager. The City Manager authorized and required that there be an investigation, and the employee relations division of the City Manager's office did that investigation. And in the end, the document that was produced to the public which was a redacted version of the complete personnel report, that's all that was given to the council. The City Council was never given any other information, because they were not the appointing authority. They had no basis to get any additional information. So I just want to point out that it is a very narrow exception. It is only applied with respect to council appointees. And with respect to appointments, evaluation and those case. I will point out, when he or she appoints the department head, they bring forward the ratification of the department head. Last week the City Manager brought in a new director of planning for approval. The City Council ratified that appointment. The next week is a ratification of a new parks director and the City Council will take action on that. It is a very narrow basis and they have a very limited exception there. The labor negotiations, that is or collective bargaining agreements, and the purpose is to permit the council to review its position and instruct its negotiator, typically it is Alex Gurza, our director of employee relations to discuss and direct him as to what positions to take in labor negotiations. And that is something that we are more and more involved, it seems like labor contracts are coming up increasingly, and we have one, specifically with respect to fire, which we haven't come to agreement, we are heading into arbitration, that is ongoing so it is used frequently. There is the real property negotiation, and the purpose is to -- which really and this is the court definition, arises out of the realities of the commercial marketplace and preventing the person with whom the city is negotiating to sit in on the negotiation. It is limited on price and terms of payment. That being said, there are cases where we do give background in order to get direction on price and terminates of payment. And I know there is some discussion and it is a discussion this committee will probably want to have as to the scope of that the attorneys for the California newspapers association take the position that it is a very very narrow and the city attorney's, the league of California cities, city attorney's group takes the view that you're not discussing the other terms, you have to provide background, and it's unrealistic to think you can talk price or economics without giving an overview what it is, the project or a proposal. So I think that is something you will probably want to have a discussion on, and I know it will be something that I think people will have opinions on. In terms of the Milpitas ordinance, I use that because I looked at the matrix and that was the left side of it. We -- it mostly mirrors what's in the Brown Act. And we follow that as well. There are some specific requirements, there are what are called safe harbor provisions in the Brown Act how matters are noticed. We have followed that from day 1, since that was adopted which I believe was in 1994. We've always used those ways of agendizing what items are coming before the council. It's not in any -- it's not in the Brown Act as required, it is just suggested. But again it's really best practices and we do follow it. There are areas where there are differences. The first is, we keep meeting notes, Milpitas requires either audio or audio and video recording. I know that will probably get some discussion. The meeting notes we've kept for time immemorial. For how long we keep them, I think we keep them in perpetuity. I only say that because I

know we haven't thrown any away, I know that for a fact because when we moved from the old City Hall I found in my office notes from 25 years ago from the City Attorney closed session. And so I think those are things that you know, we do keep meeting notes, that's the record, and that was really before there was any -- I mean it was just a good practice. And I think that's something that we will continue do. But I'm sure the conversation will go into whether there should be audio or videotapes. We don't disclose meeting notes unless instructed by council. And in my tenure, it's only happened once and that was in connection with a proposed negotiations with the San José sharks, or their management affiliate, for a soccer stadium. Milpitas requires disclosure of recordings when there is no longer a rationale that would apply to keep it confidential. And I think there is a question there as to when do you make that determination. Settlement agreements. Settlement agreements are disclosed when they're final. Under this draft, the settlement agreements over $50,000 must come before the council. And be provided in open session and must be provided ten days in advance to the public for review. The threshold dollar amount is $50,000. In looking at that it would not be problematical in most cases. I think there is cases where you have a settlement and it's important to get it done quickly, signed up, and people are looking for their money. And that goes to the business terms of how much you're negotiating. Ultimately what you have to pay. And so there may be circumstances where a ten-day prior notice is a problem. I would also throw in that I think the $50,000 is a very low threshold given the fact that our contracting authority is going up. And as Dan McFadden mentioned it's going up, the proposal is go up to $1 million. So I think we had in this draft inserted a $1 million discussion. That is for your discussion. Collective bargaining agreements, it is agendized in discussion. Immediately following, when we have concluded results, we put it on the next council agenda. This draft, this Milpitas concept requires it made 15 days in advance of the meeting. And I would raise some concern there only because as I think I indicated, many, many times you're up to the midnight of when the contract is going to expire before you have agreement and sometimes you go into it and you need to get that contract approved as soon as possible. So yes it does go to an open session and yes the public should have time to review it. But there may be cases where there should be a contract in place, where the workers know they do have an approved contract and they're operating pursuant to that contract. With that, I'm really here to answer questions and to address any specifics that you might have.
>> Ed Rast: Bob Brownstein.
>> Bob Brownstein: One of the issues that's developing is, to what extent does the information from closed session really need to be closed after a case is resolved? In other words, once the -- this is involving litigation. Or maybe even real estate negotiation. Once you've bought the property or once the case has happened, is there any reason why the full text or the full videotape of that session isn't simply be made available? Based on my experience, I'm concerned that there is enough repetitiveness and similarity between cases that if you, you know, if you make public the way that the City Council and its attorney handled its defense against, say, a certain kind of personal injury claim, that you weaken your ability to defend against a very similar kind of personal injury claim when it comes later. It's a personal concern. I'm wondering if you feel that kind of repetitive problem is a valid one or not.
>> City Attorney Doyle: We are difficult defendants to deal with. We're not like an insurance company. The City of San José is self ensured for the most part with the exception of the airport. That means the General Fund is on the hook for any liability. We have reserves. But we are not easy prey to defense attorneys. To the point of why we do that, we do that again to protect the General Fund. And we are -- and we're not afraid to try cases. I don't like to give away that strategy in terms of a specific case, as to what the weaknesses might have been because there are as you say almost cookie cutter cases, a dangerous condition, a slip and fall, we see that all the time. That goes to terms of notice, what the city

may or may not have known, it goes to the issue of what the plaintiff's damages are, what types of treatment did they seek, doctors they may have visited, you get into information and including confidential information that you only got by deposition or by expert testimony. And so some of the information needs to be kept confidential, because they may affect privacy interests at well. That is something that I know there is a demand or there are a number of people that wanted to get access sooner rather than later, at least in certain cases. I would leave that to the discretion of the City Council. They're the ones I think in the best position to determine whether or not they want to release something or not. They did in this one instance that I mentioned evolving our soccer negotiations. But generally, you know, there are a number of factors to be considered. The council labor negotiations is another area, I think there may be some concern on the part of councilmembers in terms of candor and full discussion, when you're talking union contracts, particularly Public Safety, as to where they want to go. They may have long range impacts that they may not want out of the closed session. Again, you know, I frequently use the quote that John Kennedy use to cite of lord Chesterton, you don't take down a fence until you know the reason it was put up. These are narrow exceptions but are put there for a reason. It would be a matter decided by the council. One year, two years, three years after, I think the council should make that call, you're asking my opinion, as to when the need no longer exists for confidentiality. I think that would be my recommendation.
>> Ed Rast: Susan Goldberg. Microphone closer.
>> Susan Goldberg: If meetings are recorded or taped, or otherwise recorded, and -- or otherwise memorialized, and then it is final reply released, I do think it gives the public some assurance, what was spoken in closed session was defined by the Brown Act. The conversation went far and away beyond what really many lawyers thought should be discussed in closed session. It wasn't just a price negotiation, it was about how to rally public support for this proposition. So I think without there being almost the threat that all this will become public later, that you can have this occur in closed sessions. And I don't think the public really has any confidence that the discussion is necessarily sticking to what it's supposed to be.
>> City Attorney Doyle: Let me just -- I frequently admonish the council, I can say we can't go there. And I will say categorically, that the discussions did not go where you said it went or where the article says it went.
>> Susan Goldberg: I have the minutes too.
>> City Attorney Doyle: Look, these are comments. It is no different than a panel, a member make a comment, but didn't mean there was a discussion. A councilmember said, he was concerned about how the campaign would go. He just blurted it out. It didn't engender discussion.
>> Susan Goldberg: That's why it would be great to have a recording or have a video of the meeting.
>> City Attorney Doyle: And in that case, the council said yes, let's turn it over. I say let the council make that decision because I think they will. I'm less concerned about the press or the public getting access. I'm more concerned about the plaintiff's attorneys getting information or the bargaining groups, in terms of negotiating strategy. I think that's again something that you raise -- it raises a concern about there's a purpose for the closed session and the purpose to keep it confidential. And I can assure you, those comments don't get online and when they do we bring them back.
>> Susan Goldberg: There will be some need for some things to be discussed behind closed doors. And in some cases it may always remain -- need to remain behind closed doors. Why something can't be public as opposed to on the rest of us why it shouldn't be.
>> City Attorney Doyle: Let me give you an example, on the tran shooting case, took about a year, year and a half, there had to be some discovery. It was a case that really brought up a lot of issues, there were

a lot of personal issues brought up, both on the side of in terms of the woman who was the victim, and the officer as well. And I don't know if disclosure of that information serves anybody any good, given the impact of the privacy of the individuals involved. In the end the city saw this as a tragic case and they wanted to make the family whole. There were two children orphaned by that and they wanted to do that. That's why I think the council is really the best judge of determining whether or not that information should be made public. Because they're the ones who have sat through that, they know the details, and I just have a blanket rule that causes me concern.
>> Susan Goldberg: I mean, I don't think that you would do it by you know, in two years later it would become public. I would think that perhaps you could have some sort of a judge or a board or a panel, somebody who is not the council, who is already deep in the soup. And I think is way too conflicted to actually decide whether to make something public at which they may not come off looking as they might like.
>> Ed Rast: Judy Nadler and Bob Brownstein.
>> Judy Nadler: I can say having participated in closed session in my public life, that the attorneys know, and I think at least in my experience, enforce the very narrow definition of what constitutes a closed meeting. Because there are people who know what those are. It is in the public's best interest to only have those meetings whenever they are absolutely needed. Without going into detail of any particular case, I can say that there are times, particularly in employee negotiations for example, labor contracts, and also I would agree with the City Attorney, in terms of litigation, where it is not in the public's interest to divulge future scenarios or strategies or any of that. And I am always -- I always try to err on the side of getting the public all the knowledge and information that they need. And so I think that whatever we decide to do, we have to really be extremely cautious, in that delicate balance between protecting the public, which is what you're doing often in not disclosing, and assisting the public, when it is appropriate to provide them with that information. And I think the other issue, and I hope that this will be on the agenda for the mayor-elect and for the council, is that many times, the questions or the cynicism, or doubt, lack of public confidence, really comes from a lack of understanding what the process is. And fortunately, they don't teach civics anymore in school. And so people really do not understand how government works. And if they understood a little more about how government works, they might have sort of that baseline of information by which we can continue to educate them, and increase their confidence in the public. But -- so I would just say that generally, there is a very strict -- there are very strict guidelines, the city attorney's have their own ethical standards that very to uphold, and just I think we need to tread very, very carefully in this area.
>> Ed Rast: Bob Brownstein and Karl.
>> Bob Brownstein: Bob Brownstein. Rick, I find your arguments about being careful to release minutes or visual information is because it will increase the vulnerability of the city to be persuasive. But I do not find persuasive your argument that the City Council is the best judge of making the determination about when and whether things should be released. Because I mean, the quote I'll use is from the old English philosopher, Thomas Hobbes, people are bad judgment in their own cases. Bad judge of whether it should release the information that it violated the Brown Act. So my thinking is, how do you achieve both the goal of making sure the council is using closed session appropriately and at the same time, protect the taxpayers? And I think that could be accomplished through having some kind of very carefully selected third party that could review minutes or tapes, and only bring forward a situation in which the Brown Act wasn't handled the way it should be. And I was wondering if you could say whether you thought -- I mean I understand you were representing your client. So if you can't talk, fine. But you know, I don't -- I'd like to know if you can tell us, whether you think there is any jeopardy to the city of having a

retired judge who is sworn to be objective and all that who is going to take a look at these tapes and the only time he comes forward with any kind of issue is when he looks at that time tape and says, son of a begun, they're talking about getting Joe blow elected, rather than something within the Brown Act terms.
>> City Attorney Doyle: Bob, my concern has been a blanket rule on a time limit. That's why I throw it back to the council as the best judge. And I think frequently given term limits you will have subsequent City Councils making decisions on prior actions so it wouldn't necessarily be the same people. I am thinking outloud and hadn't thought in terms of a third party resolution. Maybe when there is a dispute, you enter into a neutral to make that decision. In my seven years here we've had one instance. But it is one case, I think the task force can look at and maybe it would be fair to have a neutral look at that. I want to say my client, the people of the City of San José, working through the City Council. We are a representative democracy, and the City Council is elected. The citizens put there and they're there to protect the interests of the citizens of the City of San José. We are servants of the public and we're not here to hide things. We're there really to protect the city. And you know, I'll get off my soapbox now but I did want to say that.
>> Ed Rast: Karl and Dan.
>> Karl Hoffower: Karl Hoffower. To continue on that point of litigation, real life example has to do with the county and the Department of Of family and children's services. Our commission found numerous violations of civil rights occurring from child and protective services. When you see a pattern, there is a pattern of behavior where a part of our government is ignoring basic human rights or civil rights, I'd like to see it disclosed later, how many cases did they have regarding this one area, or how many cases where they settled on this particular thing. I'd like that information. I'd like to know in closed session when they negotiated to pay off this particular litigant, how many times did that happen? And I know there's a thing where you say well we want to protect it from personal injury, from lawyers going, oh, look, there's that one exit, and that one exit always causes a traffic jam and so we're going to get all these guys going after that stuff. But personal injury has statute of limitations, right, two years. So that's where I go well, if one should wait three years, and then you'll have all these cases coming forward for us to look at, but then we will actually get to see as citizens what were some of the defects of our city, and how good were they at mitigating those.
>> City Attorney Doyle: I think that again, maybe using a statute of limitations without a specific year, because there are different statutes of limitations depending on the cases. There have been child molestation cases involving city officials in the past, there are circumstances, when does the statute, that is probably public interest but at the same time you have private interest as to the victims and names. What gets disclosed is another issue. On the child protective services there may be victims and they may be minors, that you don't want to, there is only so much you can disclose. Maybe that's where that neutral concept may work.
>> Ed Rast: Dan Pulcrano.
>> Dan Pulcrano: I'm glad you brought up your client because come January 1st the client is going to have a slightly different appearance and composition. One of the Reed reforms referred to this task force, with respect to closed session, states that all council closed sessions should be recorded electronically, and that the information should be made available after the reason for the secrecy has passed. And we, as a body, have to make a recommendation as to whether to endorse the mayor elect's call for recording and release. Are you speaking against the mayor-elect's proposal?
>> City Attorney Doyle: I think Councilmember Cortese has a similar proposal, and no, I'm not. I'm going to leave it to this body to decide that issue. I think I -- I will throw out things to be -- to look at in terms of issues to discuss, whether or not you have written the minutes, whether you have written notes, whether

you have audio, whether you have audio and video. And the one concern that has been expressed to me in terms of actual recordings is again the purpose of a closed session is to have a full and candid discussion. And there may be instances where that may be inhibited. And I'm -- and it's not because people are going beyond the Brown Act. Because if it gets out, and there, again, the political considerations and other considerations, but with respect to certain unions, with respect to certain individuals, there may be concerns about that. And so you won't have the full and candid discussion. That being said, it's really trying to balance it against the public's interest and what's been going on and should we have a more complete record of actually what went on in closed session. That's what have you to struggle with in coming up with the recommendation.
>> The reason for the discussion might be attorney client privilege and that may be persist. Or maybe this guy is a scoundrel and that's the reason for never disclosing it.
>> Ed Rast: Ken Podgorsek and then Susan.
>> Ken Podgorsek: I would maybe agree, that there are some issues that maybe never should see the light of day just for a variety of reasons. But I would probably guess that that is a very limited number of issues. Some of the issues you brought up like child molestation cases, the issues related to the woman who was shot, you know, related to her family and personal issues, those have no -- the public doesn't benefit by knowing that information. I would strongly suggest that a third impartial party could very easily determine what information is appropriate, and what information is not appropriate. We had -- in the United States, if you go to the United States government, you want to go to some records that are now released. Under the freedom of information act you can request those records and sometimes you get those records and you get three words, it's all black. I'm not suggesting that. There are ways to release information, you're releasing the substantive discussion, without releasing details that really should stay private. Again, I believe in the long run that the real way to solve this, in terms of both public confidence and in terms of conducting the public's business in the most open manner possible, is to bring a third party into this picture and allow the third party, at some determined amount of time, to make the choices on what is releasable and what isn't releasable, as to what is to the best benefit of the citizens of the City of San José.
>> Ed Rast: Susan then Dan then public.
>> Susan Goldberg: Rick, I know you're familiar with this. Milpitas and San Francisco both require recording of closed session, then it's released after the rationale for keeping it secret is released.
>> Dan McFadden: I don't know that they've ever released a tape from a closed session. We try to find that out. I don't think they do. The problem is, there's the -- like I say, the gap between the word and the act. And you really need to go a little deeper to find out but I don't think it happens.
>> Susan Goldberg: That's why I was asking.
>> Ed Rast: Dan, do you have another comment?
>> Dan McFadden: I wanted her to finish but I do have a comment.
>> Ed Rast: We have a public comment. I thought you were finished.
>> Dan McFadden: Another couple of comments here. I've been on issues on other venues than here. Have you to ask yourself, if you're going to tape and release the information. Again, as I said before, when something finished, you can get your arms around that. But you really have to ask yourself whether you're changing the message completely. If people know they're speaking on the record for publication, if they're speaking the same way, the fact is they don't. You get a jury of experts to help you on purchasing. If they know their rating sheets are not going to be released with their names, you can get a helpful honest evaluation that serves the public. If you know it's going to be released with their names you don't get that, you get a totally different product. I think the question is, how will the council change its way

here, if you tape and release the material? And they don't have control over that release, if you do it every two years or if you do it, whatever standard you set. It will definitely change the discussion in there. You will not get anybody as you go into police and fire negotiations, saying I don't think we ought to give the police and fire an increase or benefits or take care of this, you won't, it's political suicide, it won't happen. You'll get a lot of posturing for the record. You really got to think when you go into this what you're trying to accomplish. I would like Rick to talk about, I don't know how many cases you deal with, we're dealing with Milpitas and San José.
>> City Attorney Doyle: We have over a thousand cases but not all of those we take in. I can tell you there is probably a couple hundred that we will take in in any one year and probably out of those 50 are fairly significant.
>> Ed Rast: Public comment then we'll come back.
>> James Chadwick. I think that the task force seems to recognize the value of having a third party make a determination about whether or not the disclosure of closed session information is appropriate. I think there are two considerations that you have to take into account. One has been raised by Mr. McFadden. Is the mere fact, the mere possibility of disclosure going to negatively affect the ability of the city to conduct its business. I think when it comes down to it most of these people have the fortitude to do the right thing. Even if they have to stand up and explain it. And if they're not really willing to stand up and explain it, then they're maybe not really doing the right thing. So I'm not sure that I accept the premise that city operations will be radically and detrimentally affected if there's even the possibility of disclosure. With respect to when disclosure might occur, I think talking about Mr. Brownstein' suggestion that other people have reflected that there be a third party, a neutral owho can look at this, not just to determine whether the Brown Act has been violated but to address this issue of whether or not disclosure is now appropriate. And in that proceeding I would just suggest, what would the burden be on the city, the city can come in and say look, there is an ongoing issue, we have an ongoing potential, if discussions of this one case are disclosed, it will impair our ability to send the city in ongoing cases, fine. But at least there should be that third party in there to hear both sides and be able to look at the information, and make a determination as to whether or not this is appropriate.
>> City Attorney Doyle: I would just like to know that just in terms of why the confidentiality is important, and again, determine that you can only go in for very limited purposes. And there was a bill passed I think three years now, introduced by Joe Simidian that the legislature passed that makes it illegal, to disclose, without the authority of the legislative body, there is a strong policy reason why these have to stay confidential. Why it is a crime if you do. So that is something in that context that the committee should discuss amongst themselves.
>> I think the conclusion -- I'm sorry the conclusion you draw from that, I think is exactly the opposite of the conclusion that I draw from it, that particular law was passed in order to agriculture people who were present during what they perceived to be violations of the Brown Act. In other words, they could not disclose what was illegal. Now, because they risk being punished. So you know, I found that particular law pretty distressing, because it puts a agriculture on whistle blowers and makes life very difficult.
>> Ed, I read that legislation pretty carefully and it said an exception in there that you could not agriculture anybody, that I think was pretty clear on that. I see it as opposite.
>> Ed Rast: Rick.
>> City Attorney Doyle: I think perspectives are different. Clearly, I was prior City Attorney in City of Concord, where information did get leaked out of closed session. I know in one case here it got leaked out in the metro. And the information was in the fly, not just looking at Dan. But it is one thing that distresses councilmembers to no avail, that they think they are having a confidential conversation, they

are very, very candid, and somebody leaks it out without any authority.
>> I think the city attorney's office handles thousands and then you say hundreds of cases.
>> City Attorney Doyle: We have over a thousand cases in the city but we probably take a couple -- I mean they're to the all -- they're everything from workers comp case to a police shooting case. So my point is that there's probably a couple hundred that we take into the city council on an annual basis with maybe 50 of those being fairly significant.
>> But these are all different -- you're just talking about litigation, litigation on a wide basis?
>> City Attorney Doyle: sewer backups, excessive force, all different types of cases.
>> Great. My second things is, actually I'm going to bring it up later based on how this goes.
>> Ed Rast: I'll make a comment and then we'll go to Ken and then Ed Davis. The initial perception of the public of the role of the City Attorney is that the City Attorney represents not only the City Council, but the public. And in four of the five large cities in California, there's direct accountability to the public because the City Attorney is elected. When we look at the issue, because of the role is the way it is now, where there is no direct accountability to the public, it's indirect, and your client is the City Attorney, I'm sorry, is the City Council, there in my view needs to be an oversight to basically do that or to change the definition of your role. Otherwise, you have a situation where the public's confidence or trust in the process is very -- is not there, in lots of ways. The other issue that I look at is, the definition of what actually is covered in closed session. It is the impression of a lot of people that the current administration stretches that definition to go into areas that are not in the Brown Act, to where they stretch it, and that again, with no oversight, we have no confidence that doesn't occur on a regular basis.
>> City Attorney Doyle: To the first point, I think the recent elections is the testament to when the voters want to change course, they change course, and you have a change in administration, to the extent there are those perceptions, again, my client, my principal client is the City Council, but it's no different than a corporation who has duties to the shareholders through its board of directors. Here the shareholders are the citizens of San José, they elect their representatives, and it works. We have -- and I would submit that we have a far more professional staff in this situation than we necessarily do in the situations when you have an elected. But I don't want to necessarily go through the elected versus the appointed City Attorney. To the second point, simply that it's -- I don't believe it's true. It is not true in my view that we stretch the bounds to go into closed session. That we are very strict, in fact it is strict that we tell staff that they cannot go into closed session. I have had occasions that I've had City Council members to ask, why didn't we go into closed session. On Norcal and, as a result it blew up in public and it was one of those things where we did not give authority or our sanctions, is really the word, to go into closed session on certain items. So we do not do that. We are very strict about that. And I want to change that perception I think is my point.
>> Ed Rast: In other cities, especially in charter cities, the definition of the role of the City Attorney in San José. In other cities that role is also defined as also the public. Would -- I'm not sure that we need to have an elected City Attorney, but it would seem to me there should be at least some definition that in that in the city charter that clearly indicates the role of the City Attorney should be responsible to the public as well as the City Council. And that would, then, get some of this perception versus what you perceived, the difference between some of the public perception and your perception of what the role and what's actually going on.
>> City Attorney Doyle: And I probably should have brought our mission statement down to tell you how we do our role. But it is representing the citizens of San José through the City Council, through their elected representatives. That citizens make that decision as to what is in their best interest and they did it recently through the ballot box. It works. If that's something we need to do to try to change that

perception, I'm willing to have that conversation.
>> Ed Rast: Ken Podgorsek, Joan and back to the role.
>> Ken Podgorsek: I have a question and possibly a comment. My comment, you're right, it's a perception. And the way to change the perception is to -- the way to change the perception I think is Ed's leading in the right direction is that the reality is to represent the citizens of San José, and the City Council's elected representatives, does not necessarily go hand in hand that if you're representing the City Council, you're representing the best interests of the citizens of San José, nor does it go in hand and I use the example of a board of directors, and by representing the board of directors, you're representing the interests of the shareholders. It is a lousy example, they're not looking out for the best interests of their shareholders. Yes, we have the right as a shareholder in a corporation or as a citizen in this city to remove people that are doing that and those things do happen. But in the meantime, the ultimate goal of a city is to benefit, it's to benefit its citizens. So that is a comment. I have a question I need to ask and it just jelled in my brain. Did you say you had a closed session at 9:00 in the morning before every council meeting?
>> City Attorney Doyle: It's usually 9:30 every Tuesday before the council.
>> Ken Podgorsek: Every Tuesday. This is my comment. The exceptions to the Brown Act are very narrow and supposed to be rare. To be really frank with you, 52 closed sessions a year, I'm sorry, they don't meet during curricula week and they don't meet in July, so you take that five out of it, so 47 closed session a year hardly meets the definition of rare.
>> Ed Rast: That's right.
>> Ken Podgorsek: So there's something going on here. If we have a need as a city to meet, to have our City Council meet 47 times a year, to discuss a very, very -- a very narrow set of.
>> Ed Rast: Definitions?
>> Ken Podgorsek: Of definitions, thank you, are we doing something wrong in how we manage our city? Because the real issue is that these narrow things, you don't normally meet in closed sessions over positive issues, you normally meet in closed session over negative issues. Are we overusing the concept of closed session in San José, there are a lot of things we meet in closed session, could we bring it before the public and narrow that?
>> Ed Rast: Judy Nadler.
>> I want to allow Mr. Doyle to respond to that question.
>> City Attorney Doyle: The volume of matters that go to closed session, I don't have the statistics. I'd mentioned earlier that the meetings last anywhere from 20 minutes to three hours. Sometimes it's a light agenda. Tuesday we have a proposed appointment of a parks director for ratification, we have labor negotiations and we have I think one litigation matter. There isn't -- I guess the first issue is, there's probably about 40 meetings a year. We're a city of a million people and it's really an indication of how much business comes before the city. If you take a look at the City Council agendas they're fairly significant too. And it really is, there is a lot of things that go on in this city of a million people. We do not use closed session excessively, in terms of trying to bring things forward. It is something that is only used when necessary.
>> Ed Rast: Quick comment. Clarification, you have 40 some-odd meetings a year.
>> City Attorney Doyle: If you look at how many council meetings there.
>> Ed Rast: If I do the math, you're talking about 60, 80 hours of closed session a year.
>> City Attorney Doyle: That's probably a fair number.
>> Ed Rast: Okay, Karl. And Joan. And then David.
>> Karl Hoffower: So based on what you're saying, you have it as a standing thing there's a closed

session, you throw material in there as it meets the Brown Act for exemption?
>> City Attorney Doyle: Correct.
>> Karl Hoffower: And then basically on what Ken was saying, when it comes to the perception of who the City Attorney, who their client that they're most likely to be working for, comes back to this thing of you mentioned that well, the people spoke, we have a change of administration. The purpose of this sunshine committee isn't when there's a benevolent dictator in office, it's when there's a malevolent one. When there are thoughts or purposes that are counter to what the intent is that they're restricted on doing that. Just on examples, HP is a great example of a board that was led astray by their attorney's opinion. So anyway, that's what I wanted to say.
>> City Attorney Doyle: I'm not naive enough to think that everything is handled by the voters. And we're going to have Nirvana because the voters speak every four years. We do have a system of government and I think we follow that system that the voters are represented, I mean, I -- when I present a case, on the City of San José, the system of government, you know, it begins with the people of San José. It then goes to the City Council. It then goes down to the City Manager and the other appointees. Most of those people happen to fall under the City Manager. The people are at the top. And that can't be lost upon us. We are well beyond the scope of closed session discussions. We're talking about the role of the City Council and the City Manager. I'll be happy to have that on another agenda if you want.
>> Joan Rivas-Cosby: Much the same as you're giving us the general agenda for next Tuesday's meeting is it now currently listed, I mean, a general heading such as we're going to do real property negotiations, we're going to talk about labor negotiations, you know, without sharing any details? Go ahead.
>> City Attorney Doyle: It's fairly extensive. With respect to real property negotiations have you to identify the property, many you are to identify the names of the negotiationing parties on both sides. The litigation you have to name the case or if it's no litigation, it's just what purpose you're under threatened negotiation, and there's a significant exposure to litigation.
>> Joan Rivas-Cosby: I guess my question for the task force, if there was a general heading without information such as the specific property, would that be satisfactory to the task force? Is it? See, that's what I didn't know.
>> Ed Rast: Judy Nadler. Did you finish?
>> Judy Nadler: Two thing. One is, when the council meets and they adjourn, they have to adjourn to the next meeting. And so that next meeting would be -- or has a potential to be a closed session, at which the subject would be disclosed at the adjournment by the City Attorney, citing the government code section allowing for that particular, whether it be the code section regarding real property, regarding litigation, regarding personnel or whatever. So there is an awareness, and just like having a place holder on the agenda, there may be one item, in a city of this size I'm sure there is at least some, you know, there's real property stuff going on all the time, there's probably litigation stuff and personnel things. But my -- the point I wanted to make is in revenues to a comment made by Ken. And I think it does -- he expresses a lot of the public's concern when he says that things that are in closed session are bad news. And I just have to say, that that should be dispelled as a common perception. Because you know, the appointment of the new parks and rec director is not bad news. And many times, when you know, you seal a deal that's great for the city, that's clearly not bad news. So I think we as a Sunshine Reform Task Force also have to be, because these meetings are being televised, et cetera, we have to be talking about the things that are going well, and not even in our moments of frustration, you know, sharing what we think is all wrong about what's going on, but I just wanted to clarify that there are lots of good news that come out of closed session as well.
>> Ed Rast: Dave Zenker then Dan McFadden.

>> Dave Zenker: Dave Zenker. Just broad comments really. I think the skepticism and suspicions you show here, we are still in the process of bringing sunshine forward. You're going to get a lot of that from this group. Saw say you do hold the party line and you maintain some level of a strict enforcement at those meetings. I believe you have a staff of professional people that have a strict interpretation of the Brown Act and probably does keep the civilian folks in line with what they can discuss and what they can't. We can take a lot of steps forward in the way of sunshine to start recording those electronically. A lot of it was discussed today, you know, make some great moves with regard to striking a balance with regard to what can be released and what shouldn't. I have a better understanding of some things that probably shouldn't be released and some things that should be released. The whole notion of labor negotiation and labor discussion to me is a conflicted issue. I think you know, especially the two most powerful unions in our city, police and fire, that's a big issue for me. Because they're very expensive. They hold a lot of political power. And yes, on the one hand, I don't want the strategy of negotiating with them out. You know, they cost us a lot of money in this city and they get a lot of great benefits. And so I'm going to have a hard time with that one. I'm not quite sure where I think this task force should land there. But on the other hand some of this real property negotiation stuff that's going on I think we need to think long and hard about when some of those things should be released. I think ultimately there's some real wins here with some of this stuff. I agree with you on a lot of other stuff, with regard to the fact that some things should not see the light of day. But from one task force member I want to say some of the suspicions that come out here are just part of the growing process that we're all going through and it's because the culture is slowly changing and until it's completely changed, not everybody is going to be in the same place yet. Until frankly the city staff, I'm not saying you guys at the table but all the people working in this building start to Evangelize sunshine, we're not going to be in the same place. It's going to have to come from this group and work it ways floor by floor until it gets to the 18th floor. And everybody needs to start talking about sunshine in the same way, is everybody going to be ultimately talking about open government in the same way.
>> Ed Rast: Dan McFadden.
>> Dan McFadden: Dan McFadden City Manager's City Manager's office. Under article 7 of the charter the manager is the enforcer. He has to enforce the charter. You don't have that, things kind of come apart. The City Attorney under article 8 is basically to serve the council. There are issues related to ethics and enforcement, City Attorney is not the attorney general, not the IG, not the DA. There are things that have occurred over the last two years that the charter didn't anticipate and it does need to be revisited and they've had to make it up as they go here. So it's an issue. I don't know that elected attorney is the answer. But there is a question. And then the other -- the-Judy was talking about adjourning. A lot of cities adjourn to closed session. In open session, they announce what they're going to do, they adjourn to closed session, they come back, they announce the results. So it's all part of a continuum. And the perception is that you're in on it. Even though you're not in the room you understand what's going on. But here, these sessions are so long, we just had negotiations OE 3, probably went into closed session a dozen times, maybe more.
>> City Attorney Doyle: Until they concluded yes.
>> Part of what you're trying to get at is bringing them downstairs into the chamber, and so the people can see -- I'm not exactly sure what the mechanism is but they can see that what you're adjourning to do, and then you come back out. Now there's not that part that point of contact.
>> Ed Rast: My comment was in four of the five largest cities in California that's the way they have it set up. One of the ways of solving it of course would be to defining the role in the city charter, because charter cities are a different form. Part of the responsibility of the City Attorney is to the public. Two things,

one, resolve some of the perception that the only client of the City Attorney is the City Council, and second of all, in cases where there was the City Council or the mayor pushing on the City Attorney, the City Attorney would be able to go back and say, wait a minute, part of my responsibility is to the public here and I'm not sure that what you're advocating is exactly in the best interests of the public. Let's try to balance this out. You see where I'm going. Because I think there is, it would change dramatically, the political environment of the city to go to an elected City Attorney. That goes to a bigger discussion than what we're on here. Ed Davis.
>> Ed Davis: I had some time where I was supposed to talk about the other closed session in the context of what the other cities are doing. I don't think any detail on that subject is very well spent. I think this conversation based on what Rick's talked about has been very, very helpful. A few excursions into whether Rick should be elected or not. [laughter]
>> Ed Davis: Hopefully I'd like to suggest this, focus our discussion on what we have to do with closed session issues. I will say this on what other cities have done. On the closed session parts of the sunshine ordinance, all they've done is really a little tinkering on the outskirts. They haven't done anything what I would consider substantive on the closed session. I think there are two reasons for that. Number one, I agree completely with Rick, that the closed sessions in the Brown Act, the justifications are very narrow, and what they say, they're very specific. And even the limited ones they have, there are only the four that Rick mentioned, and I actually had written, I call them a little bit differently, but I wrote them on a sheet of paper up there. Those are the four really that we have to concentrate on. I don't think we have to worry about licensing of rehabilitated criminals here in our discussion. In those four areas there are largely agreement, yeah, these are probably things that should be discussed in closed session. So I would suggest to you and you've already started doing it and hitting the key topics here and I hope it is clear, that it is not really, should these topics be discussed in closed session. That's not really the topic. It's how to make sure that those are the only topics that are discussed in closed session. So, I again would suggest to you that the items that are going to be most important for your consideration, and what you should focus most on, are, one, do you record closed sessions? If so, do you videotape, do you keep notes, do you require videotaping, audio taping, that's one of the key questions. And the next one, whether or not there is some mechanism to disclose that information, and what would trigger that mechanism. And I'm not advocating at this time any particular result. But I think those are the two issues. I think as you look at other sunshine owners, they've shied away from anything really extreme in that area. They either don't address it at all, or they say upon a majority vote of the council we will release information that was disclosed in closed session. If you were to, A, require videotaping, and B, set up an entity who upon some request or whatever review it and determine whether it should be released to the public based on the fact that there is no longer need for secrecy, or that the Brown Act had been violated, that would be a radical departure of what other sunshine ordinances have done. Those are really going to be the key issues on closed session. And I think it's helpful to get Rick's view and it's helpful to get a lot of other viewpoints on this particular issue. But this would -- this consideration of this issue, you may decide to be like all the other sunshine owners, and either not address it, or do it in a less than radical way or to really take a radical step and require videotaping and require in some fashion release when the need for secrecy is gone. Lots of other tinkering we can do in terms of settlement, confidentiality, let's say, okay, this sounds all right. But then focus on the real key issues and recognize that we're dealing with really sensitive topics here with litigation, labor negotiations, and we don't want to cut the knees off of the people having to do those kinds of things. But Dave's point where you draw that line is very important one. And let's focus our time on discussing that and don't spend too much time discussing other ordinances and things we can adopt fairly easily.

>> Ed Rast: Dan McFadden.
>> Dan McFadden: On videotaping closed session, it's expensive because you have to set up with a camera and crew and you have to tape people, other than audio, and then again, we have to store the tapes and everything, that's either audio or video. Think about outtakes for campaigns from those closed sessions out of that video. Think about in the campaign, and where have you a split council. And you know, how much theater do you want to introduce into that process? Those are the kind of things that's completely your decision but I think those are the things you want to take into consideration. Just wanted to follow up on that.
>> Ed Rast: Bob Brownstein.
>> Bob Brownstein: As I've already indicated, I think some additional mechanism is necessary to make sure that the council is in fact using closed session appropriately. However, I do want to emphasize the importance of being cautious, when releasing information, using a mechanism that involves the release of information to potential litigators. None of the people on the other side will ever have to disclose their strategy-make practices to the city. So if we have a situation in which it's a competitive situation, and one side, even delayed, has to disclose its decision-making processes and the other side never does, you skew the playing field towards the people who are in competition with the city and the taxpayers over very precious tax dollars. So we want to be careful that, at the end of the day, the consequence of trying to develop a mechanism to make sure the City Council acts appropriately, is not one that allows the people to take the taxpayers to the cleaners.
>> Ed Rast: That's a good point. Any other comment? Margie.
>> Margie Matthews: I know, I have to comment, being in many closed session, this is a good place to have sunshine, but part of me is picturing a sort of surrealistic kind of picture here, conversations that are not real, calendars that are not real, and it would have the unintended consequence of suppressing rather than opening up. I'm wondering what the council and the mayor will look like five years from now or eight years from now when they're sort of living and acting in an artificial way, and the real decision making and the wielding of power is happening even darker than it is right now. That is to say that is the kind of reaction that I'm having to this discussion.
>> Ed Rast: Any additional comments?
>> Joan Rivas-Cosby: Joan Rivas-Cosby. When Dan was talking about having the crew, the crew is listening to everything we have to say. I suppose we would have to shoot and kill them after they were done with the recording.
>> Hi, John.
>> Ed Rast: Rick, do you have additional comments?
>> City Attorney Doyle: Thank you for inviting me.
>> Ed Rast: Very good conversation. I think it's -- the conversation was not meant to be critical of the -- of the City Attorney. It was trying to get at a definition of what -- how you operate, in the role where we can take a look at the particular area.
>> City Attorney Doyle: Well, I've grown a lot in this job. And somebody told me sometime ago that used to be nobody knew who the City Attorney was. And you know, things have changed. So I don't know if that's good or bad.
>> That will help your election chances. [laughter]
>> Ed Rast: Thank you very much.
>> Margie Matthews: Can we take a little break, Ed?
>> Ed Rast: Let's take a stretch break for a minute or two. [recess]
>> Ed Rast: Administrative discussion for a few minutes. I'd like Ed Davis to explain what his proposal. Ed

Davis has a proposal on continuing on what agenda item. Closed session.
>> Ed Davis: Consistent with what I was talking about earlier in terms of the closed session, I think you guys already have a good handle on what the key issues are on closed session. I'm not recommending one way or another other than an approach for how we move along. That is, if you could identify for Lisa and me the key policies kind of questions, two right off the bat, what kind of record keeping at closed sessions do you want. Do you want videotaping, audiotaping, notes, nothing at all, and is there going to be a mechanism for closed sessions, do you have a third party do it? Something along those lines. Those broad policy notion and then whatever other broad policy issues that have you dealing with closed sessions. And get a consensus on how you would like to see the sunshine ordinance look. Then Lisa and I will go back and draft the entire closed session section. And I would suggest that we use the Milpitas ordinance for our guideline, because I think it is probably the most progressive, and we'll fold into that your, you know, policy direction that you have. So we'll work with the language, based on your general viewpoints. And following that direction, we should have a whole policy or -- I'm sorry, a whole closed session section done based on your direction to us on broad terms, rather than specific wordsmithing.
>> Ed Rast: I'll have Sheila Tucker explain for a few minutes, weave have the closed session using a different formatted different than we had before, targeting larger policy issues or overall, what's the concept that we're talking about or intent? Sheila. Does the microphone work?
>> Sheila Tucker, City Manager's office. Lisa tell them about the framework.
>> Ed Rast: Lisa, want to try?
>> Lisa Herrick. I can go through the thought process, not in great detail or just explain what the documents are before you. You may -- I think the discussion you've had beforehand, before this, has been really healthy. And so whether or not you want to really focus on these documents, it may not be necessary. I tell you what we did. For closed session we used the headers, and I'm using the phrase header. You'll recall that the task force really wanted staff to, and the task force wanted to look at the framework of the San Francisco ordinance and take the skeleton, I would call then the headers of the San Francisco ordinance and use that framework to -- as going forward for discussion. So closed session: Permitted topics is a header out of the San Francisco ordinance. So in each -- for each header we queued up some questions for discussion, tried to do a comprehensible high level summary of the Brown Act, and then closed it up with what the current San José practice was. The other document that we prepared, that I think has been referred to, is the matrix. We took the Milpitas ordinance, and listed that on the last -- on the right-hand side away we did for public meetings as well, highlight some of the differences in the various owners or similarities. And then for this particular document we actually highlighted those provisions in any of the ordinance, highlighted, came up in gray,.
>> Ed Rast: The Sunshine Reform Task Force from Dan McFadden September 28th, about halfway down on the second page starts off closed session, questions for discussion, what topics are to be considered, six pages, and then there's also the matrix. So we can just move right through that.
>> Documents D and E respectively.
>> Ed Rast: All right.
>> I'd like to propose an alternative. I don't think we'll get through six pages today, I think we'll get in the same situation as we did with public meetings, detailed point-by-point things. My discussion with the mayor-elect indicated that he was not asking us to have an ordinance language section by section, provision by provision, by January. But he did want some general --
>> Ed Rast: Policy.
>> Yeah, some policy points. And he, as part of the referrals, there were four specific policy points that fall under this category. And with the chair's permission, I'd like to take everybody through those four

points. They're fairly simple, I can do it very, very quickly. And then we can decide if we want to refer them to him. Because I think the mayor-elect is looking for some specific points, some action from us on this issue by January.
>> Four points are on your computer but we don't have them?
>> Dan Pulcrano: No, you have them in the Reed reforms. I've summarized them and I'll read them. The first one point 10 in the Reed reforms is simply a statement which says broaden the closed session disclosures, okay? So one of the Reed reforms is to broaden the disclosure of closed sessions, period. A very several, away appears to me a statement principle. The second, which is his point 11 in the Reed reforms is prohibit closed door meetings for task forces, commissions and committees. Now, I suspect that there will be some general -- there will be some specific committees like a salary setting commission and a couple of others, which may have some -- may have some provision for closed door session but in general, open meetings for all task forces, commissions and committees. If I could just get through the four, then we'll get through -- the third one I have listed up there is disclosure, disclose appraisals used in the purchase or condemnation of property after the terms are agreed to. And then the last one is record all council closed session meetings electronically, and make the information available, after the reason for secrecy has passed. So broaden the disclosure, prohibit task force and commission, committee closed meetings, disclose real estate appraisals, and record and release the closed session meetings.
>> I think on number 2, I think that we -- I know it's restricted very much in the city who can have closed door meetings. And I think there's only like the -- let's see, there's salary setting committee And there's commission, there's only like three or four. So we need to get that language specifically to you but I think that's relatively easy to answer. I wanted to follow up on Ed Davis's thought on you know, what are we trying to do here. If the concerns with closed session is that we're violating the Brown Act , then there needs to be some way that that can be validated, that it may not -- there are costs to releasing the recordings of the meetings. There are. It does change the way the meeting is operated and does affect the negotiations. Whether there could be a third party that anybody could appeal to if there was a question of violation of Brown Act in the closed meeting, so that the audio, video whatever, that the audio could be listened to by the third party if there was a question of violation of the Brown Act. As opposed to releasing. We get into releasing, is it a two-year schedule, one-year schedule, majority vote, what is it, each has something to talk about.
>> Ed Rast: Susan Goldberg.
>> Susan Goldberg: I think what we really ought to be talking about, sessions ought to remain closed if there remains a excelling reason to have them be closed. Otherwise, people should know what their government officials are saying, if that affects what people say behind closed doors, that may not entirely be a bad thing. I mean, it might make the meeting more on point. But what I'm wondering is if we could take an innovative step and perhaps do what San Francisco and Milpitas have done, which is to record the information, but then, instead of having the body that was involved in the closed session decide whether or not it can be released, have a third party, a retired judge, some sort of a panel be the person that could help make that decision, and perhaps each side could argue the case. In some cases, there might not be a lot of argument about whether that information still does need to be secret, in other cases it might be quite contentious. But some kind of an arbitrator.
>> Dan Pulcrano: Susan, before we get too deep in this can we take them one at a time?
>> Susan Goldberg: To me number 4 is the biggest one. I don't know what number 1 means, what does broaden disclosure mean?
>> Margie Matthews: Have I a copy of Chuck Reed's sunshine open government memo which conveyance, they're not numbered, they're letters. Is there another document that the task force got that

you're referring to?
>> Dan Pulcrano: It's the Reed reforms and it's in the binder. What I've pulled out are the four pieces of that, the four bulleted points that relate to closed session.
>> Ed Rast: All right. So the first one is broaden the closed session disclosure. You can cover one of a couple of different ways, one of them as Susan has indicated where it's recorded and then, in turn, it's a third party looks at it. You could also do -- how else could you do, broaden the closed session disclosure.
>> Susan Goldberg: The question is how you really snores those.
>> Ed Rast: I agree, away oversight do you have.
>> Susan Goldberg: Right now in San José official misconduct is something that can be in closed session unless it involves, it is allowed to be in closed session unless it involves a public official, in that case it must be out in the open. If for example a department head in the city were accused of embezzling money or the City Manager was accused of embezzling money that could be done in a closed session. That kind of a problem, when you look at a city like San José operates, the department heads, what do you call it, charter appointee officials are really the people who run the city. So to me, that would be the kind of thing that they shouldn't be able to go into closed session for. If that is what you mean by broadening disclosure, that would be one question.
>> Ed Rast: Part of broadening disclosure, should there be a point in time when it's released, there's 25, 30 years of closed session that nobody's ever seen. Ken Podgorsek.
>> Ken Podgorsek: Ken Podgorsek, my suspicion is that legal staff is not going to be able to give me an answer to this today, but they should look into this. This is regard regarding closed session, if you did create an opening even at some point in the future of conversation that occurred under that, what would -- by opening that door would you be opening the door to the -- to obtaining that information as evidence in a subsequent or maybe even unrelated lawsuit but related to the same topic, would a judge, basically allow, say, you have a provision to allow for its disclosure, I know you don't, you've got this third party, third party says ah, we shouldn't disclose it, but you've got provision to allow it, we're going to put it in as evidence. If that's the case, we wipe out the benefit of having a closed door meeting on litigation or settlement. My concern is are we opening up the city to additional liability or cost that we maybe don't want to do.
>> Ed Rast: Dan McFadden made an earlier comment and some of the other people have, if you start disclosing it then you essentially muzzle or put a caution on the people saying anything in it, especially those running for office, going to be used again on the political side of it.
>> Ken Podgorsek: Mr. Chair, my concern has got more to do with risk to the citizens of the City of San José by risk to our General Fund.
>> Let me respond directly to that. The case cited here was the Cisco case, and we released information requested and we summarized and released it to the press from the City Manager's office. Then of course when you go beyond the Brown Act or beyond the state records act and Mr. Davis can certainly comment on this, then you open up liability, yes. So we were sued by the person involved for releasing private information. And so any time we go over what we get beyond the state law, we open up ourselves to a suit from the other side. And so yes, the answer is if you -- I think if I understand your question, yes, our liability and the possibility of, probability of suit increases. Yes-no. Eight mean, I'm sounding like an attorney and I'm not one.
>> Ken Podgorsek: Now I'm going to follow up on a comment. My concern is I want this greater openness. But my concern is that we're not creating a situation that is going to bite us all in the butt. My feeling is once we open this door we may not be able to close it again.
>> Ed Rast: James.

>> Addressing this discussion about potential liability for disclosing information from a closed session, I think that's what we're talking about.
>> Ken Podgorsek: Actually my issue specifically is related to litigation and settlement.
>> So the Cisco example's a little off track. Because that had nothing to do with anything discussed in a closed session. Plus, the Brown Act expressly allows the city to adopt provisions for greater disclosure. If the disclosure is lawful then it can't be an invasion of property claim. To your point, information, this is a difficult area. And as a lawyer who advises clients and cares about the attorney-client privilege, I won't tell you that it is ubiquitously a problem. Most cases are fairly unique. They're not repetitive. You're not dealing with situations where the same things are happening over and over again. And frankly, if you are, somebody is not doing what they should be doing. Somebody's not correcting a problem that should be corrected. In most cases you're not going to have the problem of disclosure of closed session creating more liability. Those cases are fairly unique. If they're not done, nobody is going to be disclosing anything. If it's over, if the statute of limitations is past, nobody involved in the case can sue anymore and most cases disclosure is not going to create a problem. There are going to be exceptions and that's why I think the idea of a third party neutral is a good one.
>> Ed Rast: Ed Davis, Bob Brownstein and David Zenker.
>> Ed Davis: Let's say hypothetically in the closed session in the litigation case involving an intersection and the discussion in closed session is, we need to settle this case quickly and cheaply because this impression is one hell of a problem, okay? That's probably not an uncommon type discussion. So you settle that case quickly and cheaply. I cannot tell you that if that particular discussion became public, that some other plaintiff's lawyer would not use it to demonstrate that the city was aware of the dangerous condition, and failed to act later on. And I've got to disagree a little bit with James, in that that may very well be a recurring type of situation that happens. So I think the upshot of it is that we do have to be very careful in litigation kinds of situations. But it may very well be that the answer to that is not a blanket don't record, and under no circumstances do you release, but have a mechanism that will weed out, or shield, however way you want to look at it, those cases where disclosure really would injury the situation, and litigation, labor situation, whatever.
>> Ed Rast: Let me stop for a second.
>> Ken Podgorsek: Can I ask a follow-up question on order?
>> Ed Rast: Go ahead and then I'll make a comment.
>> Ken Podgorsek: Very quickly as a follow-up. My concern is not so much that we can't put a mechanism in place. We can definitely put a mechanism in place. My concern as an attorney, stating the mechanism is in place, they're not disclosing it because they're stating the mechanism, since they do have the ability to disclose it, they're just choosing not to disclose it because it would prove my client's case and I believe it should be disclosed and I would like to have it entered as evidence. See, in other words, the law doesn't always -- the law tends to be very black and white in its treatment. It doesn't talk about gray area and I'm concerned about the outcome with black and white.
>> Ed Davis: It's a good question, let me try and answer it Ken while I'm thinking it through here. There is no doubt that when it becomes known in the legal community that there are tape recordings of these closed sessions, that some lawyer will try to get it. I mean, that's just clear. Whether they will be able to get it from some type of argument that the violated the sunshine ordinance, and as a result, I'm entitled to get it, you know, I can't predict how a judge might rule on it, other than to say yeah, it's going to happen, somebody is going to try it and it may or may not work and they may or may not use it to their advantage. If you way the pros and cons of having this particular mechanism, that one criticism is not enough to justify doing it. I think the more legitimate concerns are make sure you don't disclose things in

litigation or negotiations that legitimately, that we know are going to ham per the city's ability to protect itself.
>> Ed Rast: Let me see if I can clarify something. We've had this discussion and it keeps going around. It is at least my opinion that we have a consensus that we don't want to draft anything that is going to get the city at financial jeopardy in that disclosure. Bob Brownstein.
>> Bob Brownstein: I'd like to make a few comments. Like Susan I don't want to broaden disclosure if I don't know what it means. And you raise one specific one and there may be other specific ones. Secondly, I do think that the circumstances of repetitive litigation is very real. If you have a police department, you're going to get police brutality charges, if you have the best police department on earth. And they will happen, and if you release the information on how you're strategizing every one of those cases, you only increase the likelihood that you'll lose future cases, you increase the likelihood that there will be future cases. Nobody wants to have force applied to them whether they're right or wrong. People are human. I tend to preferring audio. It is cheaper. We should consider these separately because they are separate. One is the objective of preventing the miss use of the Brown Act. The second is the objective of making information public if there's no longer a reason to keep it private. And those are not the same. So from my perspective, and also, I think the course benefits are different. I think there is a very important accomplishment to be made in terms of demonstrating to the public that the Brown Act is followed faithfully, and legitimates, you can't do it with no risks. My inclination would be to have that be odd audio and to have it complaint-generated but I could be convinced there's another way to do it. In terms of making the information public just because of the argument that at some point there is no reason not to, I'm not as convinced that there is as much of a public benefit as to justify risk. I would look for more restrictive language in terms of when that information could be made public, as in the case of where they violated the Brown Act, you know, no mercy, that becomes public. You give clear direction to your third party that that has to go forward.
>> Ed Rast: Dave and then Susan.
>> Dave Zenker: Dave Zenker. One of the things we've talked about over and over in this task force is the need to set the bar high. I'm actually going to go against that. This is an area where we need to be cautious. My inclination is really to agree with Bob. I'm going to say some of the same things probably not as eloquently. There's nine things here listed under the Brown Act's permitted topics. I believe we need to focus on those, the top four talked about, labor and negotiations, real property, personnel and litigation. I'm going to stay away from labor and negotiations and personnel and litigation. I think this should be an ongoing point of review for this task force and start install. At a minimum, the recording of the meetings, audio recording is probably making the most sense, by making video recordings you're including another person, basically a staff person into a confidential meeting that may not make sense. To me, you should have the equipment there that the City Attorney could operate themselves. Why include a person who maybe shouldn't be there. So audio recording makes sense to me. Start small, we're capturing the information, broaden disclosure in steps, maybe do a six-month pilot where you have a team of appointed attorneys that review what's been disclosed and what hasn't, and we analyze that at the end of that time period, because we determine had we disclosed this, what would have been the impact. You know, if we had disclosed this litigation, if we had disclosed this personnel issue what really would have been the impact of that and then make revisions from there.
>> Ed Rast: Susan Goldberg and then Karl.
>> Susan Goldberg: I think audio recording is fine. I don't think we need to become movie makers. But I guess my concern about only having disclosure if you suspect a violation of the Brown Act, is well, how do you know? If somebody has to -- and what is that grounded in, necessarily? Whereas, if there is this --

if there is the broader understanding that information can become public, once there's no need for it to be secret anymore, I think it does put folks on sort of a permanent notice that eventually this could all come out. So you should never really screw up. What worries me is, what if there's all kinds of violation of the Brown Act, and you never know, therefore, you never fight for the information, and on what basis do you even bring that? Whereas if there's sort of always an opportunity for that to become public once its need for secrecy is passed everyone is always going to be aware. As far as the litigation is concerned, I'm aware of that but if the city is having the same problem over and over and over again in such a way that it could be used against the city, for example, there's a Public Safety hazard at 4th and Santa Clara street, and they keep settling the cases, maybe they should fix the problem and if this becomes public it would spur that result.
>> To Ed's comment and resonates with what Susan said. Basically if there is a problem in an intersection, I'm sensitive to the idea that the City's financial interests need to be protected. But over and above that, is the Public Safety interest.
>> That's why I used it as an example.
>> So yeah, if people are getting whacked at the same intersection repetitively, fiction the intersection. And the public's benefit is reinforced, so the intersection can be fixed overrides the city's immediate financial interest in settling the case. Same with police brutality. If there's people are getting clubbed by the same officer, people are dying of respiratory failure, in San Francisco it was recurring repetitively, if the cases were being settled by squelching the information, if we can get the information out there about negligent actions of the city, that is overridden. Regarding point 1, it seems some members of the commission are uncomfortable about the vagueness of it. I suggest we table the first point and Pete has said he will ask the mayor-elect for clarification, his intent on that, before that comes back. On the other points, I did make a note of some points where it appears we're having common interest, that audio recording, it seems some agreement that audio recording is a good thing, is anybody against that? The third party review of release is a good idea, that the council not be reviewing their own release, some objective third party, is that reasonable? The third part of the agreement was -- well that was to get more information.
>> Ed Rast: We have Karl and Ed and Virginia.
>> Karl Hoffower: Just to follow up on what Mr. Zenker said, taking a look at what the impact is on litigation is a great idea, to see had we disclosed this, what might some of the impacts be. But routinely, and I think attorneys will attest to that, we give them $50,000, we can do that X amount of time before it changes because of the cost of repairing the intersection. That's the course of the litigation, you could just pay them this and settle it versus fix it. And again, I go back to the county because there's time after time after time for people who have settled their cases against the county for civil rights violations and nothing has been done to change the practices. If we look at what the county is going to do for sunshine, because I think they need it also, so anyways that was my point there. There are huge sums at risk, and how certain personal injuries and other types of personal litigators, would look for an opportunity to exploit this new change to the Brown Act, I like the idea of seeing -- doing and experiment and seeing what would be the consequences of disclosing or not disclosing.
>> Ed Rast: Ed Davis.
>> Ed Davis: I've got an idea that I don't know if it will work but it was triggered, what you said Karl, let's see how it works. Here's something that we might want to try and it combines a little bit of everything. That -- and I wish Rick were here, because we can kinds of put his feet to the fire, too. That when an issue is in closed session or afterwards, the City Attorney has to certify that the release of this information would be, however you want to phrase it, a substantial risk, present a substantial risk to the

city. If he doesn't certify, then when the need for the information being secret passes, then it automatically is going to be made available to the public or upon request or whatever you want to do. If someone wants to take exception to Rick's certification, that this should not be disclosed at any point in the future, then it goes to the, or can go, upon request, to the review body. And do this as part of a pilot program. You know, first of all to see if Rick designates everything as nondisclosable under any circumstances, ever, or see if there's a pattern as to what is certified is nondisclosable. But then the other, the stuff that's not so certified, when the need no longer exists for secrecy, and that he obviously agrees to that because he hasn't certified it, then that will become available. So you have both recording, audio recording, you have a third-party review set up, I have a custom ideas about how you would do that, too. But if for those things that the City Attorney really thinks would injure the city, he has to certify that, and then that's reviewed if somebody makes a request or demand or whatever of this third party board. You could see there are patterns developing, what needs to be protected, what doesn't, if the City Attorney, some deference would be paid to the City Attorney's certification, I haven't seen anything like this at all --
>> Susan Goldberg: It is an innovative --
>> I'd say radical.
>> Susan Goldberg: So the City Attorney would be the one to decide if it had closed had passed? Who would be that person?
>> It would be by default that if it's not certified, as something that needs to be kept secret, it would --
>> Susan Goldberg: As soon as the meeting ends?
>> I haven't quite figured that part out. I was --
>> Dan McFadden: Dan McFadden, City Manager's office. There's got to be some way to see if the Brown Act has been violated. I don't know whether more detailed minutes at the end of the meeting, could be a conclude or a guide as to whether something has been handled well or mishandled in there. But I any it's a legitimate concern as to whether or not we've stayed within the product. As Rick said, sessions I've been in, I've been very care of on that. I don't know that you can get a sense that we're doing that and maybe it is with more written minutes. Right now I get very few action minutes. Whether something is going to be detrimental or not, it's part fiduciary responsibility of the council. It's creative and it does get us past something here, Mr. Pulcrano's thoughts. Maybe it is a combination of some way to check on whether Brown Act has been misinterpreted, some control on what's released, so it won't be harmful to us, and maybe some more detailed information on what went on in the meeting.
>> Ed Rast: Susan Goldberg. I think Karl had a question first.
>> Karl Hoffower: I love the idea, I think it's trick. But you'd brought up the point, Mr. McFadden, I certainly don't want to see two years, during election time that some political interest group is publishing, do you know what so-and-so said? There is discretion on that body that allows it to be released, maybe the audio recording is not released, but detailed minutes. The cop tent conditional I don't want the emotional reaction, hell, no, we're not going to give police and fire more money. I just want the substantive what was discussed.
>> Bob Brownstein: I think Ed Davis said he hasn't, presumably it's the same third party, and there's some way of --
>> Ed Davis: Well I think on a lot of matters, it would be self-evident. For example, on real estate negotiations, when the default position, as soon as the contract's signed, then it's open. Litigation, as soon as a settlement is signed, then it's open. A contract, as soon as a contract is signed. That's the default position. And then, it would have to be you know, Rick stepping in and saying well this particular litigation settlement is so sensitive because of these reasons, invasion of privacy or whatever, so I think a lot of these things, it's almost self-operating, that absent the certification, the reason for the secrecy will

end that is clear to everybody. But again I'm thinking of this off the top of my head.
>> Ed Rast: Susan and Virginia and --
>> Bob Brownstein: I wasn't finished. I think we ought to work a little bit more on the issues of default and things like that. But the other point I wanted to make is, this is the way I look at what Ed's proposing, primarily a way of dealing with the issue of when information should be made public generically, when it is no longer a threat to litigation, and therefore could be made public. It is not focused at primarily Brown Act violations. That I think is actually the more primary goal of creating some reporting mechanism. Maybe the way to deal with the control of potential Brown Act violations is both the complaint-generated mechanism but as Susan Goldberg said, you know, how do you know? So sort of to add some extra pressure on that, you could have some sample of closed session, so you don't have to pay for a judge to listen to every single real estate negotiation, but you say X percent go to the retired judge, enough to be cautious about not doing things in a kosher way because that could be in the sample and then there's serious repercussions. So maybe between the complaint generation and the sample we're covering the control on Brown Act violations and the Ed Davis strategy, we can try and flesh it out on the more generic problem.
>> Susan Goldberg: You make sure it's not every third meeting.
>> Ed Rast: Susan Goldberg and then Dan McFadden.
>> Susan Goldberg: What Ed Davis said, one release of minutes because we were in the middle of a mayoral race. This raises, what Rick said is aside, this raises huge questions, because there are three or four words per line. And what it would indicate in fact is not relieve my concern, but raises huge concerns that the Brown Act has been violated and the discussion went all over the map and the stated reason for closing the meeting. To me, I don't think we should ever rely on notes like this but this supports the idea that we need recording of the meetings.
>> Virginia Holtz: Recording of minutes by parliamentary procedure only records those actions that are taken, and they could be very explicit minutes on the actions being taken but there is no requirement of any recording of the other kinds of discussions or comments that are made. So I would support having an audiotape made. The question I have is, is it important for people who are maybe reviewing these, to know who is speaking? And with an audiotape, you may or may not know the voice of that particular councilmember. That's a question I'm raising. Maybe how you can go around is you can go around at the first of the meeting introduce themselves by name, and that will take care of it. But --
>> Ed Rast: Dave Zenker.
>> Dave Zenker: Question for the city attorney's office. Who typically attends the closed session meetings and do they sign a confidentiality agreement at every meeting or one like it agreement?
>> Lisa Herrick. I'll tell you what my experience has been briefly with the city and I think Dan probably has more to add. There is no confidentiality agreement signed to my knowledge. And then the attendees at closed session depends on the subject. So if it's a labor negotiation then typically you get the employee relations people, Alex Gurza and others. If it's litigation then I might go in if it's Mike Hayes, I'll be present when there's some discussion about that. So it depends.
>> Dave Zenker: Who's on the other side? Obviously the City Council members but who else?
>> It's supposed to be very limited. Because otherwise why would you -- you need to preserve confidential by reducing the number of people that are present.
>> Dave Zenker: Are City Council staff allowed to come?
>> I have not seen City Council staff.
>> But mayoral staff?
>> That's correct.

>> Ed Rast: Where were we now, Bob and then -- Virginia, I thought it was Virginia next right?
>> Virginia Holtz: I finished.
>> Ed Rast: You finished?
>> Virginia Holtz: One other comment I wanted to make, I think there's merit in what Ed Davis was presenting on to us, that concept, I would like further presentation on that, as well as what Bob presented.
>> Bob Brownstein: The random idea?
>> Virginia Holtz: Random selection of minutes that are prepared or recordings that have taken to an entity for review.
>> Bob Brownstein: I want to make a comment. I've been thinking more about Ed's default comment. Let me just indicate some of the scenarios I'm concerned about, and I think we should try and fix them. We may not have the answer today. But you have an eminent domain case, and five members, six members of the City Council say, let's offer the person whose land the city is interested in, this offer, it's less than what the person is asking for. But if the guy says no, and wants to go to court, we're not going to be dragged into a trial. We don't want to have -- I think it's bad publicity for the city. That eminent domain case is finished. That tape becomes public. The next guy who wants to do an eminent domain case, this recording five members of the City Council say if I hold out for trial I get everything I want, and when the city negotiators say, make a settlement offer, he says I want 20% more. You wind up with a bunch of City Council members who say make an offer to the fire union but if they reject it's going to go to arbitration, get them what they want because we don't want to get dragged into arbitration. Then the tape gets published and five members say we don't want to go to litigation. If the other ones hold, you don't have to be a rocket scientist. We're calling the arbitrator right now. I don't think you want to be in that kind of situation. There ought to be a way to try and deal with that but the automatic notion that it's over doesn't. So we need to try and figure out some way to deal with that.
>> Ed Rast: Ed Davis.
>> Ed Davis: I think my Hayesily thought out scenario does, Rick says it should never be disclosed.
>> Ed Rast: Dan Pulcrano and then Ken Podgorsek.
>> Dan Pulcrano: What I was going to ask for is if we could get some comments on points 2 and 3. And then maybe we can move to a motion. Because I think we've gotten some clarity on 1 and 4. The second one is the task force commission, and commission and committee meetings cannot operate in closed session. Staff, is there any exceptions that need to be carved into that?
>> Ed Rast: Salary.
>> Dan Pulcrano: salary-setting commissions.
>> There are only three that I know --
>> Ed Rast: Lisa.
>> Lisa Herrick. Document D lists the policy bodies entitled to go into closed session. There are seven. You may be lumping some of them together. The City Council, redevelopment agency, civil service commission with handles discipline and personnel, the elections commission, the federated employee retirement board, the the retirement committee for that same reason.
>> I think that's already covered, we can give the mayor elect feedback on that. And the last one is to disclose real estate appraisals.
>> Virginia Holtz: Can we have a discussion and just put it to bed right now?
>> Did you want to comment on it?
>> Virginia Holtz: Yes, I would agree that we move forward with that one and support that with the exceptions that are listed.

>> Ed Rast: Prohibit closed doors meetings with the exception of these seven?
>> Susan Goldberg: I'm not sure I do agree. Some of those committees are involved in misconduct, official misconduct, is that right? One of those?
>> Ed Rast: Civil service is.
>> Susan Goldberg: Civil service, I mean I think there could be certain times when they would have a closed meeting but I would like to, you know, see us broaden the definition of whose misconduct has to be forced into the open. And I don't know if this is that time to have that conversation or not. Or if that falls under number 1.
>> Dan Pulcrano: It would be prohibited for everyone else, the Planning Commission and everything. Those six maybe we should come back and go a little bit deeper.
>> Susan Goldberg: Maybe we should put that about number 1, what should be in the open.
>> Dan Pulcrano: I don't think we're saying that they're pert permitted to do closed session, the others it is completely prohibited, the others we're going to have to get more technical.
>> Maybe the guidelines we're developing for the City Council.
>> Susan Goldberg: But we will have the opportunity to come back and look at all -- when they're allowed to closed.
>> Dan Pulcrano: Exactly. And then on the disclosure of real estate appraisals and condemnation of property after the terms are agreed to.
>> The issue that Bob Brownstein raised about appraisals, eminent domain, the purchase of property, if it's disclosed immediately.
>> Dan, point of clarity, are you talking about only the amaze of praisal or the conversation and anything related to that subject?
>> Ed Rast: Disclose appraisals used.
>> Dan Pulcrano: I believe Cortese's referral is to disclose appraisals in eminent domain matters.
>> Dan McFadden: To remind you, there's 11 votes, you basically have to go into this with your own agenda or whatever we're working with. You can see when we get up there on the 30th there are a variety of opinions. All I'm saying is, I think if it's just an appraisal on the property, it's very difficult if there's a discussion as to strategy, what Bob Brownstein was saying.
>> Just appraisal. If the staff has no objection to appraisal disclosure after the deal is finalized?
>> Those appraisals are only good for you know --
>> Short period of time.
>> And that information is in the public realm.
>> Ed Rast: Brenda.
>> Brenda Otey: The disclosure of appraisals, are we talking about a specific instance where a property is being purchased, some level of kind of defining what property you're looking at.
>> Ed Rast: Reads disclosure of appraisals used in the purchase or condemnation of the property after the purchase is agreed to. It would be, it would pick up the eminent domain as well as other purchases.
>> Bob may want to talk to this, Dan McFadden City Manager's. We don't release appraisals if the deal is not final.
>> Ed Rast: After the terms are agreed to.
>> Dan McFadden: If it blows out at some point --
>> Ed Rast: Then you don't. Brenda did that answer your --
>> Brenda Otey: Uh-huh.
>> Ed Rast: All right, Dan Pulcrano.
>> Dan Pulcrano: Okay, I'd like to --

>> Dave Zenker: Can I ask a question, I'm sorry, can somebody give me a 30-second idea of what this is about? Has there been occasions in the past where the city has paid too much or too little --
>> Ed Rast: That they essentially forced people to settle under the threat of eminent domain.
>> Yes, and there's been cases where there's been allegations of hidden subsidies by overpayment.
>> Dan Pulcrano: What I would like to do is propose this as a motion. That we --
>> Ed Rast: Refer it?
>> Dan Pulcrano: That we refer or report back to the council on these four items, one, with respect to the broadening of disclosure, we're requesting more information and clarification, two, that meetings be, closed session meetings be prohibited for all commissions and task forces except for those six, other than the City Council. This doesn't refer to the City Council, the six other than the City Council. Three, that appraisals be disclosed after the terms are finalized. We'll go with your wording Dan which is finalized. And then four, that the closed sessions be audiorecorded, that the City Attorney, I'm sorry I put manager up there but that's in error. It's City Attorney, suffice the need for keeping the tape confidential. And that in case of appeal, there will be a third party review.
>> Could I ask a question here? Point of order here. We're taking one referral out of the hole package of referrals and we're referring that to council? I thought we were doing this to refer it to your counsel here so that they could perfect it.
>> Dan Pulcrano: These are policy points -- Mr. Davis.
>> Ed Rast: Mr. Davis aand he's ah take a look. In turn, develop the rest of the language.
>> Dan Pulcrano: Four policy points, and that's a motion.
>> Ed Rast: Then Susan.
>> Susan Goldberg: Can I still ask a question about this?
>> Ed Rast: Yes.
>> Susan Goldberg: Is Ed's proposal on this sort of -- is it a sunset kind of thing? Because it seems to me if we're going to try something like this it ought to be for a certain period of time. Because if in fact it doesn't feel like it's going for enough or we feel like it isn't working, there ought to be a way to re-look at this issue. I mean I think one of the most important things we can do is have the motion out there that eventually, things that were handled behind closed doors will one day become public. And if this feels like it doesn't go far enough or isn't working it seems really important that it be revisited.
>> Or it could be the converse as well.
>> Susan Goldberg: Perhaps.
>> My thought was since I've put all of about 20 minutes of thought into this proposal, having like I suggested, a pilot project, essentially is what it is, yes yeah, for six months scenes like a short period of time.
>> There is no shortage of closed session meetings.
>> 40, to be truthful.
>> Ed Rast: We would look at away the actual occurrences would be. You look at Brown Act and --
>> However you think is appropriate to review it.
>> Ed Rast: Virginia, go ahead.
>> Virginia Holtz: Virginia Holtz. We're treading new grounds in lots of areas. And it's been my assumption and I'm just going to put it on record because not all of you are assuming this. But I'm assuming that these recommendations for an ordinance that we're going to recommend to the City Council, that we will urge them to bring back for a review, the whole packet. Because we don't know what's going to happen, and how it really plays out in the future. And so either six months or a year's time frame seems to me that we need to look at the whole -- that the whole package needs to be

reviewed. And who would do that, it's up to the council to decide, I think.
>> Ed Rast: Susan and then Dan.
>> Susan Goldberg: I just had a logistical question. If we go ahead and pass this, would we be discussing the rest of the parts of this?
>> Ed Rast: Yes.
>> I would assume we would roll these things out if we got them finished. We weren't trying to perfect them completely. We can't figure out all the unintended consequences. Six months seems like a reasonable time and we would definitely support that.
>> Mr. Chair, may I remind you it's 4:10.
>> Ed Rast: Thank you. Virginia.
>> Virginia Holtz: It's about the closed session, I think it needs to come back when we talk about special meetings.
>> Ed Rast: Okay.
>> Virginia Holtz: But I have some recommendations on that.
>> Ed Rast: Okay. Is there anything else on the -- do we want to cover -- we're at 4:10.
>> I was going to second.
>> Ed Rast: Ken Podgorsek seconded.
>> I was going to second.
>> Ed Rast: Great, discussion. Brenda.
>> Brenda Otey: Basically I want clarification that what's happening is that four points that are up there are being referred to --
>> Ed Rast: The two attorneys.
>> Brenda Otey: The two attorneys for them to bring back text.
>> Ed Rast: We'll continue on the discussion of the rest of the closed session, they'll bring that back and we'll continue on a discussion. But what this does is gets us on some of the key points forward, especially audio recording which is a new item for the council and some of the other things. Is there any other item that we need to talk about that might be something we could discuss now? But we're awful short on time. Ed Davis and Virginia.
>> Ed Davis: What I would suggest in terms of what Lisa and I do is, we'll take these items that we've discussed here, and what I'd like to do is be able to fold them into, I would recommend the Milpitas sunshine ordinance, so when you address this subject the next time, you'll have an entire closed session ordinance. In the Milpitas ordinance I think it's a good one, I think it's the most progressive of the ones that I've seen without being overly radical. Then you'll see it from the beginning to the end of a specific ordinance governing closed sessions. If you want to nitpick with the wordsmithing or some of the items on the fringe, you can redo that without reinventing the whole ordinance. If that's agreeable that's what I would recommend.
>> Ed Rast: Virginia, a comment?
>> Virginia Holtz: A question, more than a comment, we have the motion for the four points. Bob Brownstein brought some new idea. It is the task force recommending to hip to incorporate that into --
>> Bob Brownstein: We incorporated into four I believe. And I'm okay incorporating the Milpitas suggestion if the seconder is.
>> Ed Rast: Are we okay, calling the question? All in favor? [aye]
>> Ed Rast: Any opposed? We actually got through -- we got a lot done.
>> Susan Goldberg: We got to go back to closed session. We got a lot to go back to.
>> Just take a win, let's move open.

>> Ed Rast: Okay, we've got a couple of things we have to cover.
>> Susan Goldberg: Are we going back to definitions?
>> Ed Rast: We've got the discussion, okay --
>> Ken Podgorsek: We're not going to go back to that.
>> Ed Rast: One of the things we need to talk about is the study session coming up. That's one -- okay, anything else? And the agenda item for the next time.
>> Ken Podgorsek: We also need to spend at least five minutes discussing December meetings.
>> Ed Rast: And agenda and time frame. Yes, Virginia.
>> Virginia Holtz: Correct me if I'm wrong. We have gone through definitions ad nauseam regarding ancillary bodies.
>> Ed Rast: Right.
>> Virginia Holtz: We also went and made comments about definitions of city staff, et cetera. And it seems to me that those are pretty straightforward. We've already had time to comment on those. Maybe we could put to bed those easier items and sense the ancillary body aside.
>> We are still on agenda packet when we stopped.
>> Ed Rast: We had a motion on the table when we stopped.
>> Ken Podgorsek: Ken Podgorsek. I have a gut feeling, that if we take this into our next Thursday meeting, take the definitions and take the public meetings I think we're going to roll right through the definition and roll the public meetings. In reading ahead, my suspicion is that staff has caught a lot of our intent relative to definitions. And we got -- and the reason we got caught up on agenda packet is that was a brand-new one. We hadn't discussed what the definition of the agenda packet. Yes, I think we'll still talk about ancillary bodies, I understand that. But the public meetings discussion, if we're focused at our next Thursday meeting I have a feeling that we'll get reasonably far along. The chair has asked that I help with that.
>> Ed Rast: Move forward with that, Virginia.
>> Virginia Holtz: It might help if, when you're printing out the agenda for the next meeting, that you highlight those, where we are. Because we have the whole laundry list of everything down here. And it doesn't relate or -- nor do we have the documents related to those topics, right on the agenda itself. So I think it would be easier for me to follow, you know, what are we going to do next if that could be just highlighted, what we've already done. See, for instance, we're still on agendas. So we'd highlight agendas in the rest of the document or something like that. I don't know if that would help.
>> Ken Podgorsek: Mr. Chair, Ken Podgorsek. I like what Virginia is saying, it's unlikely that we would be able to complete more items in a two-hour meeting, but with that focus in mind, if we only had that one topic, all the things that come under there, I have a suspicion that that if we really buckle down we can get enthuse that. Because I think we're getting to a point now where we really are working well together and we really are progressing. We're discussing intent more than content. We're referring on to the counsel to do the writing and then you know we'll come back and do the writing. But I really -- as much as I've always said let's put everything on the agenda so we can discuss it, I think if we focus on the next meeting just on the public meeting item which includes the definitions I think we can get that done.
>> Ed Rast: So what we've got right now is, we had a motion on the table, on the agenda.
>> Ken Podgorsek: We got away from the motion.
>> Ed Rast: We stopped around 12:30 or so, took a break for lunch.
>> Ken Podgorsek: No, how did we go back to the motion? It must have been my fault.
>> Virginia Holtz: No, we voted.
>> Ed Rast: We vote.

>> Ken Podgorsek: I think we've been here too long. We're all getting glassy eyed.
>> Ed Rast: We voted on it, Rick sat here while we voted on it.
>> Ken Podgorsek: We need to talk about November 30th.
>> Ed Rast: The November 30th study session. Okay. So we had some ideas that we talked about earlier people presenting. Who is -- we now have got some topics we presented for the closed session. And we can possibly present some of those items because we voted on those items, audio recording, everything else. Sheila. Go ahead.
>> Sheila Tucker, City Manager's office, I don't know if anybody picked up their binder, but if you did there's a memo signed by Les that gives a brief just a paragraph of what is intended on the task force presentation. And the first is recommendations on the original City Council referrals and we covered that today. I will at a what we discussed in terms of all those items, we wilt put them in the presentation, we'll need presenters, and I think we decided oon a few of those. We also need someone to give just a brief overview of with where the task force is in their work plan. How you've decided to structure your work plan, the categories, we have the agenda packets prepared for them, so that they can get a sense of the scope of this project, and the types of provisions that we are considering, and then finally, any other issues that you want to bring up related to the conduct of meetings, closed sessions, milk records, enforcement, and those are the issues that I don't think we have a good handle around. And if we can just spend a little bit of time brainstorming those key critical high level issues that are likely those areas that you want to recommend going beyond what's required by the Brown Act or the public records act to get the council's input. So we did talk about a few closed session items here if we want to decide to bring any of those forward. But so we do need to decide what issues we want to bring forward and who will present those.
>> Dan McFadden: Can I make a quick comment here? The format is one that the council is pretty much accustomed to on study sessions, introduction by staff. What is District Attorney here is, this is joint meeting and they're not necessarily accustomed to the middle of the meeting be a joint meeting by a task force. So you can pretty much do what you think makes sense here, and use that time as best you think. But we'll have an opening and a closing is what they're usually accustomed to.
>> Ed Rast: Dave Zenker.
>> Dave Zenker: To offer some suggestions for that 60-minute time period under item number 3 is really our responsibility. And I think based on the discussion I had earlier with Sheila, I think we really need to design that as a high-level discussion about some of the consensus we've come to on some of the bigger ticket items. I think we can get into some of the details certainly but I think we need to offer forward some of the things we've struggled with and the things we've wholeheartedly agreed upon, and let them banter about with us, struggle as well. Ultimately I think we need to bring forth everything we can that we have discussed and agreed upon.
>> Ed Rast: You're talking about starting off with an overview?
>> Dave Zenker: Bullet points. Throw them at them. In the order that's logical.
>> Ed Rast: Talk about ten-day notice, talk about the other particular items as we go forward that we talked about to include the referrals that we talked about today, where we've got people assigned to those.
>> Dave Zenker: Based on Les's memo, this is going to be their expectation then is that they talk about the council reform referrals first, then kind of the overview of the framework for the ordinance and work plan, and then kind of the, really, everything else, the public meeting, closed session.
>> Ed Rast: And the issues. Okay. So Bob Brownstein.
>> Bob Brownstein: In terms of the status reforms referred to staff for implementation, we had some on

the strategy, some on the calendar.
>> Those are slides if someone will present them. I believe you're going to present on 4 and Susan was going to present on calendaring, if I recall correctly. I think there's one on enforcement of the conflict of disclosure you wanted to bring up. So -- or I don't know. Maybe it will be better if one presenter covers your referrals on the implementation. But I'll leave that up to you.
>> Ed Rast: The reason I suggested we have a couple of people do it is because the council is going to have questions. They're going to ask intent and everything else, and probably I think we had Bob and Susan, they have a better idea of not only what some of the intent is, they also know the topic very well and therefore they will be better able rather than one person trying to handle everything. But you know it's up to the task force and how you want to do it.
>> I think that's fine. I believe the only presenter we didn't identify is the one that would bring up the issue of conflict disclosure and wanted to have some kind of conflict disclosure on that.
>> Ed Rast: Question?
>> The task force asked us what kind of enforcement was available for enforcing the 24 hour minimum disclosure of conflicts and we did check it over the lunch hour so at some point I'd like to get back to the group about that. I don't know if this is the right time.
>> Ed Rast: Is it relatively short?
>> It is.
>> Ed Rast: Fine, let's do that now.
>> Conflict enforcement is usually done by the FPPC, the DAO also has the ability to take enforcement action. They enforce the local ethics provision under title 12. This would be in force locally through the council conduct policy, which is censure, sanction, and those are -- or admonition.
>> Ed Rast: Margie.
>> Margie Matthews: Back to the presentation, Margie Matthews. Where will this happen?
>> The council chambers.
>> Margie Matthews: The council will be on the dais. Where will the task force be?
>> There is the table on the side, where staff will sit and present, and if there's some primary presenters, we can pull those up and they can sit --
>> Margie Matthews: The reason I'm asking is logically, we have to choreograph this to see what we're doing. If Susan and Bob can kind of sit together, so when this section comes, you can freely speak according to your topic.
>> We can leave you a couple of seats, Dan McFadden, City Manager's office, staff could take two or three positions that are micked behind that. People could come from those chairs in the front and step to the podium and it would work pretty well I think.
>> Are we all going to be sitting like this with microphones or if the task force wants to say something they have to move to the podium?
>> Dan McFadden: To the podium primarily. If Ed or whoever is the major presenter, trying to move this thing along, seated at the table with a live mic, but leave the podium open so the speakers from the task force can approach it.
>> Margie Matthews: I'd be wanting to recommended that Ed as our chair can speak for us and Susan and Bob seem to be knowledgeable about this, they represent the whole spectrum, can represent, we're not moving around figuring out who is supposed to be doing what.
>> Susan Goldberg: Susan Goldberg. I was perhaps going to recommend that we not have a parade of people. Because the presentation wouldn't be as effective. But I wonder if Ed Davis would be willing to help present some of this. Because in terms of a broad grasp of the issues, he knows more about it than

certainly any of us individually know about the whole thing. And you know, has sort of a trial lawyer's sensibility.
>> Ed Rast: We can work together and put a presentation to it.
>> Dan McFadden: I think we would want Ed up at a live Mick. If Rick --
>> Ed Davis: If Rick gets to talk, I want to talk.
>> Margie Matthews: I would withdraw that recommendation and haved --
>> I feel so badly for Ed Rast, things are fast and furious, I wonder if at times you always catch everything going on. I mean, do you feel comfortable being up there?
>> Ed Rast: Pretty comfortable. But I 30 part of to be more comfortable I would prefer to have a couple other people, experts up there. I think that's -- you know, that's reasonable and also, I think it -- if you take a look at from the council's question point of view, I think they have a couple of people they can ask question to or subject experts makes more sense.
>> Susan Goldberg: Another question, forgive me if I zoned out here, are we going to put together a PowerPoint? You said that, right? Sorry.
>> Ed Rast: We'll distribute the whole thing to the task force before the meeting. We'll do that perhaps next week. And then we take a look and we can then, once we -- I would think we would have it out, the force would look at it, distribute it to the task force, then we'd have it put together. Because there may be some task force comments.
>> I was just thinking there's four mic seats in the front and four behind. The task force takes the four up front, Ed Davis, your two primary presenters and you, and we'll take the seats behind.
>> Just to modify that, I think Ed Rast should have the opening comments. He's the chair of our committee, organizing us and keeping us on task and maybe you could present Ed Davis.
>> Les will open the study session at 9:00 with some opening remarks. Then I will provide a brief overview, then we'll turn it over to the task force for their hour of presentation. It will then come back to staff, we're going to talk about implementation and enforcement a little bit, we'll have a brief presentation by Dan on implementation there is Lee price. And then it will go back to Les and Rick for some concluding remarks on balance.
>> Margie Matthews: What do you mean, balance?
>> Tradeoffs more or less. I think probably a deliberative process.
>> Cost? Liability?
>> Some of those things. Just broad concepts that are in here. And then throw it open for questions for another hour.
>> Correct.
>> And I'm not sure, this isn't all tied down. This is pretty general right now. We haven't really talked with Les or Rick Doyle on their little piece at the end. But just to conclude it based on what's been said to them, and then open it up to the public is all.
>> I could make another comment. As I can comment on our task, we've had kind of a bum rap, first we've really come together and I think we should be positive about it and kind of talk about our successes, things we really have gained consensus on and then be honest about some of the challenges, things we're still grappling with. The discourse between the two bodies. But note the things we haven't touched as yet. But I think we have enough to report out on.
>> Ed Rast: Any additional comments?
>> Dan McFadden: There is no staff report going to council. There's just this binder that they can go through and look at. So the oral report is going to be fresh, that's the whole intent.
>> Ed Rast: Good. Virginia.

>> Virginia Holtz: Just question. We've identified people that are going to be speaking.
>> Ed Rast: Right.
>> Virginia Holtz: It's my assumption that you're encouraging as many as possible to attend that meeting.
>> Ed Rast: Yes.
>> Virginia Holtz: Some people will be working and won't be able to come, that's a given. But I want to make it clear that we are encouraged to come if we can.
>> Ed Rast: I would encourage everybody in the task force, to come if they're able to. What I would look at is in some of the public comment -- if you're not included in this, there may be some public comments I would suggest if people are on the task force and want to make a public comment in the public comment session, we would ask the council to put you first in the public comment. After you have heard all the presentations there are still a point or two that you would want to make, I suggest that when we hit public comment, that the task force be the first public comment. Does that make sense?
>> Lisa Herrick. I wanted to point out that the meeting is actually noticed as a joint meeting at the City Council and task force. More than being invited, it's your meeting.
>> One last little footnote here, I'm going to meet with the department heads on Wednesday morning and invite them to sort of summarize where we are with them and invite them all to attend the joint session. It's the best way to get them up to speed.
>> Ed Rast: Yes, I think you're right. Okay. December. [laughter]
>> Ed Rast: That's a lot to get all at one time.
>> Ken Podgorsek: Can I make a comment?
>> Ed Rast: Ken Podgorsek.
>> Ken Podgorsek: Our second -- this is a comment on. Our second meeting on December if we were to meet on the scheduled date, happens to be December the 21st. That happens to be the third Thursday in December. That is awful close to the holidays. Again, I could obviously make that meeting. But I might ask, make the suggestion, that at the -- that that may not be a -- as productive a meeting as if we were to meet another time, do our second meeting in December at another time. It may not be possible but I'd like to make the suggestion that instead of meeting on the 21st of December, that we do our meetings open the first and second Thursday of December, which would be the 7th and the 14th if I'm remembering my calendar correctly. It's a little more cumbersome in the sense that we actually have two meetings in a row, might be more difficult on staff. But since we're heavily into work right now we could continue that. I'd be concerned, I wouldn't want to lose our momentum. And I'd be concerned if we had a meeting that close to the holidays with people's family events and other you know type events that we might not get all the people, all of the people here that we need on that day to have a quorum or to have a constructive meeting. And that's a concern I want to bring forward to the task force.
>> December 7th and 14th is what you're recommending?
>> Ken Podgorsek: That's my thought.
>> Virginia Holtz: I have a standing meeting on the 14th, I wouldn't be able to be here.
>> Ken, just a thought, you might at the 7th, have a call for a quorum on the 14th. It's murder trying to get people together on the holidays. No sense everybody having to come down and be short of a quorum.
>> Ken Podgorsek: You mean the meeting on the 7th, poll and see who can be available?
>> I didn't say it very well.
>> I am not sure that the room is available either.
>> Ken Podgorsek: You can check on it in the next two weeks.
>> Yes.
>> Ken Podgorsek: That's just a suggestion. Maybe it's not. I'm just -- I don't know. I try very hard to get

into the holidays. I like you guys a whole lot but sunshine is not my idea of spending the holidays.
>> Ed Rast: In January, the first Thursday is the 4th.
>> Ken Podgorsek: That's okay.
>> Ed Rast: Tuesday the 9th is when mayor elect Reed said he would be talking about some of these at the council session. That is on the 9th of January. Essentially what we have if you look at it, if we're going to meet once in December, and just you know, a couple of days before the 9th, that we've got two more sessions before we go to the 9th. So actually you've got the 30th, the 7th of December and the 4th of January, and then the 9th.
>> Ken Podgorsek: It is a conversation. The other thing too, the agenda items determine scheduling of the December 9th all-day Saturday meeting. I want to put forward, I don't -- I think we got a lot done today.
>> Ed Rast: I think so too.
>> Ken Podgorsek: I think there would be an advantage at some point to doing an all-day Saturday meeting. I didn't get the impression from the has meeting that December was the month that was really in anybody's mind. And so I would like to suggest that possibly that we don't do that in December and reconsider.
>> Ed Rast: January. David.
>> Dave Zenker: I guess my preference would be to stick with our regular schedule. Do a quorum call and make sure everybody can make it on the 21st.
>> Ken Podgorsek: He's talking about staying on the normal schedule.
>> Dave Zenker: What everybody's anticipating is what's been noticed. Don't have the all-day meeting on the 9th of December, plan for that sometime in January and quorum call on the 7th and see what everybody intends for the 21st. But we can discuss this at the next meeting.
>> Ed Rast: Our next meeting is on the 30th of November and the 7th of December. I've got an open question for the task force. In the conversation that Chuck Reed had with us, the impression I had is that he is going to want a number of referrals for the meeting on January 9th. So some of those referrals are going to come out of the study session. Then we'll have one more session that we'll have another referral, actually one and possibly two, if you count the January 4th. So where are we going to be at that point in time, and then how much longer after that, because I'm of the impression that he feels that there should be an end point. We kind of coming back and said that we thought we would be finished in March. What's everybody think? Will we -- how much longer after that? If we make progress like we are today's, will that be -- Dave.
>> Dave Zenker: I guess that's the reason I asked him the question I did. Because first impression I got was kind of that he was charging forward and -- but then you know he clarified to say that he would wait for our work and didn't want to circumvent anything that we were doing. I got the impression from him that he kind of wanted to see how things go on Thursday, the 30th, and so -- you know, I think we just need to stress how important our work is, and make sure that it folds into his efforts and the timing that he's trying to move forward. And anything that we can kind of like Margie suggested, anything that we can do that's low-hanging fruit now that we can implement that would work with his plan we should try to make that happen. We're putting off a lot of things, we're saying we're going to agendize that for later. We should try to focus I think on anything we can wrap up and get done, hand over.
>> Ed Rast: I think today's session was an example. About an hour we were able to get things done.
>> He is not expecting a full ordinance nor is he expecting we cover all issues between now and January. What he is asking for is what we just did, take four policy items that -- we took them directly out of his referrals, we took those four policy items and we said okay, these seem to be where we want to be

at a policy level and we're going to drafting. He's okay with that level of detail.
>> Ed Rast: Dan McFadden.
>> Dan McFadden: What I threw out this morning is the possibility of taking the Brown Act kind of issues, the open, close meetings, and public outreach, public information. There's not a lot that I see in public information, maybe you see it, but there's the calendar in there, but there's not a lot else. That shouldn't be too troublesome. We pretty much got a handle on closed session, or we're open meetings, if Ken is right, and he's always right, we should be able to knock that out fairly quickly. The question would be, I'm mumbling around, is there a date we could possibly realistically sort of push up against to get those three and maybe convey those to the mayor-elect?
>> Ed Rast: Good point.
>> Just further, we've tackled these four points from his reform proposal. There are four items that I discussed earlier, two have been dealt with, two can be referred to the election commission. That makes eight. And the ninth could be basically endorsing the idea that there should be a sunshine ordinance. His first calm is there should be a sunshine ordinance. If we say yes, there should be a sunshine ordinance, those four, two referred, two handled, two pre-empted by council action, one calling for a sunshine ordinance, covers nine of the 16, which are more than halfway there in terms of meeting his expectations. I suspect he will be pleased on that.
>> Ed Rast: Susan.
>> Susan Goldberg: We haven't started on public records. That's a big one.
>> Ken Podgorsek: I think on those three items, we actually could be reasonably done if not complete with those three items by January 31st. That's four meetings from now. If we do an all-day meeting you might call that five. I would say that I actually think we're closer, I know some of the larger issues are still unresolved. But I actually think we've got into so much that I actually think we're a lot closer to complete on that than I think we actually --
>> Ed Rast: Give ourself credit. Ed Davis.
>> Ed Davis: Couple of things, I don't know if 9 is interested in the Ohio state-Michigan score.
>> Ed Rast: I am very much. I went to Ohio state.
>> Ed Davis: Ohio state won 42 to 39. We missed a great game. But of lesser importance but I'll mention this too. If I could again suggest that we follow procedure like we did today, that if you have broad policy issues, specifically with the public records aspect of what we're going to do, and then say for example, this is a problem we've seen, I think this type of document ought to be available, and then Lisa and I can then work on the language, and wrap it into a session, I think we can do public records almost as quickly as we did closed session. I think we're much further along if we follow that procedure than --
>> Ed Rast: How did everybody like the way the staff laid out the --
>> It was better, much better.
>> Ed Rast: Sheila, did you hear that?
>> No, I'm sorry, what happened?
>> Ed Rast: We like the way you revised the closed session. It helped us get through it
faster. Brenda. Lisa, thank you. Thank you Lisa. Thank you very much. Brenda.
>> Brenda Otey: I think everything, the closed session, session piece did go very well. I think one of the things that made it go quickly and more productively is we had someone who gave us all of us an overview. I think that will help us to actually move forward quicker, if we have someone who does a presentation.
>> Ed Rast: That's a good opinion. Rick did a great job of helping us focus on the issues. Maybe we can look at some of these others that we can have somebody else come in and give us. And if we can have

somebody on the task force be a lead on the presentation and the lead, we might be able to like today, you know, Dan kind of picked up some of the issues and moved it right along. And then we were able -- and Susan and Bob contributed because they were very interested and it went very well.
>> Ken Podgorsek: I want to make a comment on the longer meeting. One of the purposes is we have a hard time to get rolling, it takes us a bit to get rolling. Once we get rolling, we do very well. Our regular meetings are two hours in length. By the time we get rolling we have to stop. Which holds up momentum. I think there was a distinct advantage to this meeting today and I do want to point that we did finish our work on closed meetings today in a two and a half hour time frame. Which -- so we've benefitted greatly because we were already within momentum and already started and already working together. So I would like to encourage so that we get this work done faster and so that we don't have to spend the rest of our lives in this task force that in January we really do consider another session like this and I any we can get a lot of stuff wrapped up.
>> Ed Rast: Let me clarify something on what we had talked about. There were -- there was a referral, two referrals that came back to us. One was plug loopholes in the campaign finance ordinance that make it possible to contribute unlimited amounts of money in the campaign workforce. And the other one is plug holes in the lobbyist ordinance that allow lobbyists to avoid public disclosure. Those I suggest we refer back to the council so they can refer --
>> To elections commission.
>> Ed Rast: Lisa.
>> I think the elections commission is addressing all of this.
>> Ed Rast: Administratively those are referred out and then also, there's two more, require the mayor and the councilmembers to disclose material facts before the council is taking action, which they're already doing. And require the mayor and councilmembers to --
>> Disclose any political favors or other consideration they get in exchange for their votes.
>> Ed Rast: So those are already referred back out. And actions taken.
>> The person who referred them, the mayor-elect, feels that those have already been dealt with and preempted by council action, away he calls the Norcal rule. So he didn't feel that there was a need for us to deliberatees to items.
>> Ed Rast: We have a consensus on the task force? All right. So those are taken care of administratively.
>> Ken Podgorsek: Any Councilmember that discloses political favors. [laughter]
>> Ken Podgorsek: I'm sorry.
>> Ed Rast: Wow, got ten minutes. Is there any other topics we need to discuss?
>> Ken Podgorsek: Public comment.
>> Ed Rast: Bob.
>> Bob Brownstein: Under upcoming agenda and work plan, I would like it, if we could get into the work plan a discussion of increasing sunshine on the city budget process.
>> Ed Rast: Absolutely. Great idea.
>> Bob Brownstein: Because my sense is that the average citizen of San José can impact the budget process only as a supplicant. By showing up and saying, "please fund the thing I care about" we can do better than that and I think we should try.
>> Ed Rast: That's a very good idea. I have a personal one on that, in that I think that one of the things that happens currently in the city, is that the elected officials can basically task the city staff, staff and finances, in the idea they just start things off, if I remember correctly, maybe Sheila can remind me of the exact one, the City Manager put out a list of seven or 800 once they're working on. I forget -- Dan

probably has it.
>> 835. It's council referrals that are --
>> Ed Rast: So what happens in many other cities and county is that they take major items and take it before the City Council, and actually have a discussion whether it should be referred over, and in turn, budget and staff on it. And that controls the budget so you don't have all this expenditure and then you don't get some of the things you're supposed to get done. I think good idea.
>> Can I ask one silly question, it's kind of silly but presumed, if we state it explicitly we'll be more than halfway through the referrals, which is should there be a sunshine ordinance, is it safe to assume that everybody feels there should be a sunshine ordinance? If everybody grace with that, we're more than half-way there.
>> Ed Rast: We get consensus? The other one is does everybody believe that we should have either a permanent sunshine committee, whatever, commission, so that there would be ongoing monitoring and enforcement?
>> I think that bears more discussion.
>> Ed Rast: Bears more discussion, all right.
>> Let's agendize that.
>> Ed Rast: Here's my question, do we want to bring that up at the study session?
>> Ken Podgorsek: Ken Podgorsek. When you really look at that as a question, I support it. But when you really look at it as a question, it's premature to discuss it at the point that we're at. That's actually a question you start talking about as you're moving through -- as you've moved through the items, as you've actually discussed it. To discuss it -- it's putting the cart before the horse is what I'm saying.
>> Ed Rast: That's what I was trying to find out. Good. Dave Zenker.
>> Dave Zenker: In the spirit of trying to get wrapped up today, the last agenda item we're working on the work plan for our next meeting, right?
>> Ed Rast: Yes.
>> Dave Zenker: I believe what we've proposed so far is we'd discuss definition, and public meetings --
>> Ed Rast: And try to finish it.
>> Dave Zenker: Did we want to put the discussion of sunshine on budgets on that agenda or --
>> Let's put it on the next meeting.
>> Ed Rast: Did we have consensus that we would not put that on?
>> Dave Zenker: That would go in January.
>> Susan Goldberg: When are we going to work on the rest of the closed sessions? We got a lot of it done but we left a whole hunk of it out there.
>> Ken Podgorsek: The next meeting after the 7th, if our quorum call says we have enough for a meeting for whatever date that is or we'll start closed sessions that meeting, assuming we can finish public meetings which I have full confidence that we can.
>> Sounds did.
>> Ken Podgorsek: Public comment.
>> Ed Rast: Public comment. No public comment?
>> Ken Podgorsek: So we have me consistently on record, I move that we adjourn.
>> Dave Zenker: You don't have to move to adjourn?
>> Ed Rast: We are adjourned.