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>> Ed Rast: Couple of administrative announcements. If you haven't validated your parking please do that. Anyone in the public who wants to speak, would you please speak up a speaker's card. We have a quorum, I believe. If everybody will be seated we'll start. We had two people out. All right.

>> Following your instructions Mr. Chair.

>> Ed Rast: All right, we now have a quorum. What I'd like to do is call the meeting to order. This is the Sunshine Reform Task Force meeting for Thursday, December 7th, 2006. And first item on the agenda is the approval of the November 16th and November 18th meeting minutes, which are included in your package, agenda package tonight. I believe you have to -- you have to do it as two.

>>

>> Virginia Holtz: Would suggest that you do it separately because I do have an amendment to the 16th.

>> Ed Rast: Normally you do it as two. So we'll start off with Thursday, November 16th minutes.

>> Virginia Holtz: I'd like to amend the November 16th minutes, on the second page, under V near the bottom on the last motion, which said upon a motion made by Virginia Holtz, seconded by Phaedra Ellis Lamkins. Three business days instead of three calendar days. That needs to be five calendar days which is in the previous motion. [off microphone]

>> Virginia Holtz: What we'd agreed to and final motion was made.

>> Somebody's cell phone is on the table.

>> Ed Rast: Virginia, would you read the change?

>> Virginia Holtz: This is number 3. Upon a motion made by Virginia Holtz, seconded by Phaedra Ellis Lamkins, the task force agreed to change section 2.4.1.B, staff reports and council memoranda, provision 4, to provide 3 business days instead of five calendar days.

>> Ed Rast: Is there any other change? Ken?

>> Ken Podgorsek: Before we send this forward for approval, I've never seen a motion changed, in minutes. So my question is, from a procedure standpoint, should we defer the approval of these minutes and have staff arrive the audiotape?

>> Virginia Holtz: Mr. Chair. Virginia Holtz. We actually voted on that final, that was the final motion. And it was approved by the --

>> Ken Podgorsek: Virginia, I'm not saying I don't believe you. I believe you. I'm just wondering, Lee? Lee isn't here, okay. Hi.

>> I'm sitting in but I can't answer that question.

>> Please use the microphone.

>> Ken Podgorsek: Anybody else familiar enough with --

>> Tom Manheim: Tom Manheim. I can only speak by my presence when councilmembers agree and accept minutes --

>> Ken Podgorsek: I move we accept the meetings of November 16th as amended.

>> Ed Rast: All in favor. Minutes of Saturday, November 18th.

>> I move approval of the minutes of Saturday, November 18th.

>> Ed Rast: Dan Pulcrano.

>> Dan Pulcrano: I'm not sure the motion endorses staff's approach. November 18th minutes. Rast.

>> Ed Rast: What page? So you have an amendment to the minutes? .

>> I'm not sure how to deal with it but it seems to be editorializing.

>> Vice chairperson Pulcrano could you tell us where in the minutes you're looking so the rest of the minutes can follow?

>> Dan Pulcrano: It's repeated throughout the document but it starts on page 2. It's at the -- it's the editorial comment at the end of each public information reform. I'm just not comfortable with the word

endorsement.

>> Would you be comfortable with the word "concur with"?

>> Dan Pulcrano: I'm trying to remember what we -- we accepted or agreed that it had been handled. I'm not sure that the the -- I don't want to get into wordsmithing either, but I don't think endorsement was the word we used.

>> Ed Rast: Staff made a represents-d there was a staff recommendation, correct? So maybe -- would it -- Dan would it maybe clarify if you said the task force accepted the staff's recommendation? The language that typically we would use as accepted or supported, if you're more comfortable with it. It's up to the -- up to the committee. The task force.

>> Ed Rast: So the staff's recommendation the task force accepted the staff's recommendation?

>> Uh-huh.

>> Ed Rast: Okay.

>> In various places. The motion-maker would have to accept that. Motion maker is amending --

>> Bobbie Fischler. Second Ken Podgorsek. Bobbie, you're comfortable with it? Are there any additional changes, I'm sorry amendments?

>> Ed Rast: We haven't voted yet. All in favor, opposed? The minutes are accepted as amended. I'm sorry, one abstention. Missed the abstention. Okay, comments from the chair. May Ann Ruiz as most of you know is our new member and replaced the commission representative to the task force. May Ann unfortunately tonight was not able to attend because she injured her hip, I believe was the comment. And we wish her well. But we're going to do tonight, we've asked Ed Davis and Lisa Herrick to go ahead and cover some of the points that we still have to cover. We have then also asked Dan Pulcrano and Ken Podgorsek to lead the policy discussion on the public meeting records. Let's see, we also -- we had a joint study session with City Council on the 30th, which gave some guidance. That was part of the hand-out tonight with the City Council discussion was on those particular issues. Let's see, I think the next agenda item, that's the end of my comments. Next agenda item is review the meeting materials. And Sheila Tucker.

>> Sheila Tucker: The packet tonight conveyance the agenda and the minutes that were just approved. As chairman Rast just noted, the comments and questions that came out of the joint study session, we attempted to characterize that. Lead counsel Ed Davis will lead us through, you will find document A which we'll pick up the discussion on the remainder of the definitions, the last packet is a memorandum on the Reed reforms, the council presentation on the Reed reforms. So with that we'll go ahead and get started.

>> Ed Rast: Any questions? Okay. Ed and Lisa did you want to start the conversation? On the definitions? Ed. One of the suggestions as we're going through this, we start off on policy body, so that policy body, the definitions of policy body might affect the definitions of ancillary body.

>> Lisa Herrick: Lisa Herrick city attorney's office. I'm happy to discuss or start the discussion on policy body. I'm mindful of your comments, chair Rast. But it might be helpful just to give a really quick overview of what is in front of everyone here.

>> Ed Rast: That will be fine.

>> Lisa Herrick: I'll do it very quickly. Draft 2, revised definitions. The highlighted sections showing up as gray are definition that the task force has already reviewed and approved. So this includes agenda, agenda packet, a portion of the definition of ancillary body which starts on page 2 of 5. All of the definitions of city, city staff, going on to page 3 of 5, council appointees, council staff, and then we can skip the rest of page 3, and -- well, if you'd like to skip page 3 and those definitions and move on to page 4 of 5, the definition is policy body. There had been some discussion of policy body earlier, and we did

incorporate the changes that the task force wanted. I think what the portions of that definition that the task force discussed and made decisions about, are sections A through D. And what was remaining is section E, subsections 1 through 3, and I'm happy to let Mr. Davis talk about his thought process behind subsection E, and the recommendation or the language that he and I are comfortable with.

>> Ed Davis: Ed Davis. If you will bear with me, let me give you a little bit of our thinking in terms of the issues with respect to both policy bodies and ancillary bodies. Starting with ancillary bodies, the Brown Act as I think I mentioned at the last meeting, really doesn't have anything like ancillary bodies. Several cities in their sunshine ordinances in an attempt to broaden access have decided that there are certain entities that need to have some kind of scrutiny, public scrutiny. But not the full-blown public scrutiny and all the onerous requirements that the Brown Act mandates. So they have tried, with varying degrees of success, to define something, and sometimes they call them something, passive bodies, ancillary bodies, but their organization, sometimes within the government itself, sometimes outside the government, that require some kind of access in the views of these other cities. So the issues that Lisa and I have been talking about, first of all looking at policy bodies and deciding, well, do we expand the notion of what a policy body should be, an entity that is subject to full-blown sunshine and Brown Act protection? And the Brown Act obviously defines policy bodies. And if you look at the section that Lisa referred to, policy bodies, section E, numbers 1, 2 and 3, numbers 1 and number 3 are more or less already incorporated in the Brown Act. It says if a policy body creates an entity to exercise authority delegated to it by the policy body, then it's governed by the sunshine ordinance or the Brown Act. Okay? That obviously is acceptable, and it's in all the various municipalities who have adopted sunshine ordinances because it parallels what's already in the Brown Act. Number 2 is an item that's added, that is not in the Brown Act. And it is designed to cover what I'll refer to and this is a term that I use for convenience, and I just call it a nongovernmental entity, okay? And it doesn't make any difference whether it's profit, nonprofit, whether it owns government property, it's simply an entity that is not part of the city. , a nongovernmental entity. If there exists a nongovernmental entity, an NGE, primarily, covered by the full-blown sunshine or Brown Act protections. That particular item is not in the Brown Act, and would have I think significant impact in terms of opening up access. Number 3 here, and in policy bodies, is what similar to the Brown Act, and differs in that the Brown Act would apply to an NGE, if it receives funds from the city, and has on its governing board a member of the policy body with full voting rights. One of the things that I suggested to Lisa when we were talking about number 3, is to add either a member or the member's designee. Because I had a personal experience where I was on a board of a nonprofit, which had the City Council could either have one of its members on our board, or the member's designee. And the period of time I served on the board, it was always a designee. Lisa and I discussed a little bit with respect to number 3, whether that member should have full voting rights. And because I was potentially concerned that if you have a member as designee that that's sufficient. Lisa, after discussing with her colleagues, thought that that member should have full voting rights. So that does parallel what's in the Brown Act. So as far as policy bodies are concerned, we have increased the scope in two respects, with respect to the proposed sunshine ordinance, that is one, item number 2, where an NGE exists primarily to exercise authority that has been delegated to it, and in the third one, a designee serving on a body that receives funds from the city. Okay? Susan.

>> Susan Goldberg: Susan Goldberg. Ed, in number E-2, I mean what is an example, of some group or body that would fall under this, that would not now be covered?

>> Ed Davis: Well, that's a good question. And probably Lisa would be better in a better position to answer that. Before -- let me just mention one thing.

>> Susan Goldberg: Please.

>> Ed Davis: That as we move to ancillary bodies, one of the things that I was concerned about, and various people that I know interested in sunshine expressed to me, is this: That when a policy body delegates authority to a nongovernmental entity, it shouldn't make any difference whether that NGE was created by the policy body, whether it receives money, whether it exists primarily to exercise authority, but if it is something other than the policy body would have done in open session, the NGE should be obligated to do it in open session. One of the things Lisa and I were talking about, and talking to Dan at the meeting last Thursday, is do we need to go beyond that. And in terms of how we define ancillary bodies, as you see by the papers here, Lisa and I have discussed, well, do we have an ancillary body and define it as where any authority or policy authority has been delegated to any NGE, whether it's created or it's primary or whatever, whether that should be covered. And I'm not sure -- I can see the logic behind it, if otherwise the policy body would be required to do it in public, then the NGE ought to be required to do it in public. But when we started talking about the question you asked, what entities would these cover, they had trouble coming up with any. So it may be a solution looking for a problem. There may not be any bodies where you would need to have something that would be completely different from any other city with respect to defining ancillary bodies. But that was my thinking, that if there are such entities, that if you -- if it's a policy kinds of decision, because we don't want to get involved in administrative stuff, and garbage contracts and you know, those kinds of things. But if it's a policy-type decision that's been delegated to an NGE, regardless of any fine points, whether they own property, where they were created by the policy body, then it should be at least subject to the lesser standard of the ancillary body. So all that hopefully make sense in terms of the discussion that Lisa and I are having?

>> Ken Podgorsek: Ken Podgorsek.

>> Ed Rast: Bob Brownstein first and then Ken Podgorsek.

>> Bob Brownstein: I'm interested in the full logic that Ed presented. NGE -- maybe we should use the term NGO, nongovernment organization, that's a common policy wonk term.

>> Ed Davis: That's why I didn't use it. I like credit for making up the name.

>> Bob Brownstein: Then we'll use NGE. If an NGE is doing the same kind of work that the government would have done except it chose to delegate its authority, I can't understand why we would want to limit our openness and transparency just to the three categories that are under section E. And let me give some examples that come to mind. An entity that exists primarily to exercise authorized of the City of San José is Team San José. It exists exclusive for theaters and convention center. Other operators did bid, which would be doing the exact same task as Team San José would not be covered because it does not exist primarily to exercise the authority of the City of San José, it exists primarily to serve its shareholders and has conventions in 50 cities. I think that's the wrong direction to be going in. Because actually if we were going to exempt anybody, I would exempt the local guise who would be more likely to be making some decisions in favor of the City of San José than some outfit from someplace else with a wholly different agenda. With another example, we might get to garbage company, but Greenteam is a wholly spun garbage company in San José, serves San José and no place else. Greenteam if we're covering garbage companies would be covered by this language. Norcal, which we have much more reason to be suspicious of, in light of recent history, Norcal is a national company, might even be an international company and exists to provide services all over the place. So what I would argue is, that we want to cover all of the entities that are, in fact, exercising the authority of the city, because it's what we would, it's the access we would have if the city itself was performing that function, and if there are entities that we want to exclude because we think that what they're doing isn't important enough and we don't want to make them jump through hoops, the criteria we should use is not whether they exist primarily to exercise the authority of the city, but that the things they're doing lack the level of importance that we want to have

covered by a definition -- the definition and requirement of a policy body.

>> Ed Rast: Ken Podgorsek.

>> Ken Podgorsek: Ken Podgorsek. I'm going to ask you to take this differently. I'm looking at the number 3, and let's say you interpret it in the broadest possible approach. I want to give you an example. Let's say a City Council member, a member of a policy body is asked to be on a board of directors of a nonprofit entity in San José that is part of its normal function receives grants or funds to do possibly some services in San José. By this definition, even though they are appointed by the City Council, even though they are doing it as a volunteer, you want to take the broadest possible look at this. They would fall under a policy body because they have a member of a spoil body on there. I might suggest if this language, if we're going in this direction, and this language is something we want to accept, I might suggest that the addition of some language like, as appointed by the policy body be added, so it's not so broad to catch a policy body member, because in other words, what I'm saying is I don't want to discourage our elected officials in this town of doing volunteer efforts, things that are near and dear to their heart, outside their roles on their policy body. And so I'd like us to be very clear that that's not our intent with number 3.

>> Ed Rast: Margie Matthews.

>> Margie Matthews: Margie Matthews. This I actually like. Because it looks like you're eliminating ancillary bodies, is that true?

>> No.

>> Margie Matthews: Then we'll do that later.

>> I'm sorry, go ahead.

>> Margie Matthews: My comment is if the body other than the policy body is doing the work that the policy body would have done, then most of the organizations that do government work aren't doing policy work. These are the things the rep, the museum, the garbage company, aren't anything the City Council would be delegating, if they're anything that the City Council does as a policy body. They're administrative, implementing policies but not making policies. So it would for me be the sports authority, where normally things would come to the City Council but they've delegated that. The power reverts back to the council, to the policy body. But if they never had that power to begin with, if they didn't want it, it's not in our charter, they're not a substitute policy body, overseen by the policy body or reviewed by the council or the policy body. If we can clarify what that authority is, if it's a political authority, then yes. But if it's sheerly administration and implementing, it's nothing the council could do anyway.

>> Ed Rast: Ken Podgorsek and then Bob.

>> Ken Podgorsek: Ken Podgorsek. I want to point out, these are or provisions, not and provisions. Which means qualification on any one might be policy body. You might be casting your net wider than you want to cast.

>> Ed Rast: Bob Brownstein.

>> Bob Brownstein: Following up on Margie's comments, staff raised the question, are we interested in policy decision making or administrative decision making. That's what Margie was referring to. I had tried to find out what would be administrative and what would be policy and I'm having significant difficulty in make an easy judgment. Are budget decisions policy or administrative? Or if the rep decides that it's going to take out, you know, a big loan in order to be able to operate this year, hoping it's going to have a fundraising strategy that will enable it to pay off the loan, and if it fails, it has to show up to the city and ask for a major bail-out, is that a policy decision or an administrative decision? What about the rest of budget decisions, the level of reserves that an entity has, is that a policy decision or an administrative decision?

>> Margie Matthews: It would be governed by the contract, written and approved by the council.

>> Bob Brownstein: The problem is, if you've looked at all the scandals we had in San José, every single case there was a contract, without exception. If you look at the history of failed delegation of authority in jurisdictions throughout the United States, almost all cases contracts were present. And the whole history of delegation of authority by local governments of the United States, is the history of the inability of contracts to provide adequate oversight. What contracts are good at is enabling you to have a mechanism for redress and compensation after somebody has found out that the entity you have a contract with has done a bad job. The newspaper shows it or somebody else accommodation up with it. Then a contract if it's well drafted doesn't leave you holding the bag. But if you want to exercise oversight so that you can actually know what the decisions are, when they're being made, and perhaps through public participation, avoid an unwise or even dangerous decision, then what you need is realtime oversight and that means openness and that means transparency. Almost nobody gets that kind of oversight through contracts. And the cases of horrific consequences, where there were contracts in place, is legion in the history of government in the United States. So my inclination is to recognize that an awful lot of these decisions, whether they're budgets, level of service, exposure to risk, decision making priorities, even though they have an administrative component, they really have a lot of policy component, too. The citizens of San José have skin in that game. And there ought to be access and transparency for the same reason you'd have access and transparency if a government -- if a government entity as opposed to a nongovernment entity was engaged in that activity.

>> Margie Matthews: Then by that logic we would open up all our city staff meetings, every decision that's made should be open to the public.

>> Ed Rast: Ed Davis, I assume for clarification.

>> Ed Davis: If I can particularly address an issue raised by Margie. And part of the work that Lisa and I were doing, some of the things we were trying to address were issues you've raised during several meetings. Given the spirit of what Bob was just talking about, if we were to adopt that, putting aside the difficulty of what a policy decision is, adopting that in its bureau are purest form, the easiest thing to do in item number 2 would be eliminate the word primarily, all right? And then to address something you had raised Margie, if you do that, then you really don't have to fiddle around with any of the definitions of ancillary that we still have on the table. Because if -- what you're doing is everything that a policy body had to do in public, any NGE would have to do in public, regardless of whether it was created, whether it exists primarily, whether it receives money, then you don't have to worry about any ancillary issues. So in that case, no, you wouldn't need any definitions of ancillary more than we already have that pertain to NGEs. What we were doing, though, is thinking, well, if you have a -- if you do eliminate the word primarily, what entities is that going to affect when they're subject to the full-blown access requirements of the sunshine ordinance? And that's where we went back and said, well, if you're going to give them the full-blown access, because that is the language I would recommend in ancillary, or if you're going to say that any delegated policy authority, is it fair to every single organization that might qualify for that to be subject to the full-blown access requirements? If the answer to that question is no, it's going to be too much of a burden, but you want to have some degree of openness, then you look at the ancillary definitions, which has much more stringent limitations on access. I don't know if I made myself clear there. But if you want the broadest access, then eliminate the word primarily in number 2 and you don't have to worry about anything in the ancillary. But understand what you're doing here, in thinking about are we making it too broad, and too onerous on entities.

>> Ed Rast: Dan Pulcrano then Bobbie then Virginia.

>> Dan Pulcrano: You know, I'm not sure why we're talking about transparencies, if it's a bad thing or an onerous burden for any organization to engage in. I've been on ancillary bodies. I've been on the board of

the downtown association and the Hocone foundation which manages properties for the city of Saratoga. Both bodies comply with the Brown Act and hold meetings in openness. If there was a bid for the management of a facility, and one organization was a public spirited body that was agreeing to engage in transparency and engage with the community, competing with a for-profit entity which didn't have to, I would hope that the council would view that as a tremendous competitive advantage, that says this is an organization that is going to be accountable to the community in the management of facilities that have been built with the public's money. I don't think we should talk about this as something terrible and onerous. This is a great thing. This is great for the performance of organizations. I think we will start seeing organizations behave more fiscally responsible, more accountable to the community in terms of diversity and responding to various elements of the community, they will respond better and people will come to the meetings. I think it's a good thing.

>> Bobbie Fischler: Bobbie Fischler. Under he E, I believe Ken said it is one or two or three. My reading of it is that it is 1, and then either 2 or 3.

>> You would be correct. It could be 1 and 2. Reading it up there, hold on.

>> Bobbie Fischler: There is no "or" after 1.

>> Yes.

>> Either implies 2.

>> Either does imply 2.

>> Ken Podgorsek: Ken Podgorsek. Can I make a comment? When you can look at language, I agree with you Bobbie, in looking at the way it's read. The challenge is though, we also have to look at the fact that when I originally read it, I didn't read it this way. What I would ask Ed and Lisa to look at the language and see if there is a more clear way to present that so that there is no confusion. Because my challenges in the future is that someone in the future is going to say, we're going to have these big arguments and results you don't want. And I -- if somebody was to read that and say, any body that receives funds from the city and has on its governing body a member of a policy body and or its designee, that knocks a whole lot of people from being members of a whole lot of organizations if they read it in that fashion. I agree with your reading, though.

>> Bobbie Fischler: Thank you.

>> Ed Rast: Virginia is next.

>> Virginia Holtz: Virginia Holtz. Getting back to following back with what Ken just said, if we scratched the word deleted the word either in that first paragraph, I think that would settle and clarify that number 1 is a stand-alone and that the others, either, or, 2 and 3, that's just a comment. My main point that I was going to make was, it was on the onerous aspects to the NGEs that we were talking about. If we did broaden this, one concept that I have been flitting around in my made with, the city has now a Website. We have expanded that Website considerably. And some of these groups that we're talking about already have their own Websites. Maybe we might consider modifying the Brown Act requirements for noticing by recommending and saying that yes, they would be required to notice agendas an their meetings, but it would be -- but only on Websites. So if they had their own Website, it would be on their own Website. Or another way we could go is to have, on the City's Website, a specific section related to these NGEs as we're going to call them. And have a list of those NGEs where you could click on those NGEs with their own agendas. Now, the burden then, I realize, would be placed upon the city. But it does give, if an individual community activist was looking for information about the expenditures are City's funds, in my mind, I would want to go to the City's Website. And it seems like that would be logical progression, to see policy -- expenditures of City's money. There is that list and I could click on that list to see when their meetings are held so that that would be the transparency that is available to the public. I

know that's going far beyond what we're really discussing here but I was trying to get to the point of relieving our anxieties about the burdensomeness of reporting and transparency.

>> Ed Rast: Susan.

>> Susan Goldberg: Thank you, Susan Goldberg. I wanted to ask, Ed Davis, getting back to Bob Brownstein's original point. Did you put primarily in there because you felt taking it out would make it overly broad? Because if you took it out, exists to exercise authority that the city would have, and if you don't need the ancillary section, wouldn't that just be simpler?

>> Ed Davis: It would definitely be simpler. I didn't put that in there.

>> Susan Goldberg: Oh.

>> Ed Davis: It was in there -- I'm not sure where that came from, actually. It may have come from -- there may be another city in their sunshine ordinance that uses that language. And that may be where it came from. What I was trying to do was be able to present to you different approaches. And there is no doubt that consistent with Bob's outline of the general policy which he articulated well, and which I was trying to muster up as well, it would be much simpler to strike the word primarily, it would really cover everything. But -- and I was trying to raise the other issues that people, you know, like Margie has raised, that -- and I know onerous may not be the right word, and I understand Dan's objection to me using that. There are aspects to apply the full below aspects of the Brown Act contemplated to every single body. Because we have now created a very broad definition of policy body. And consistent with what Virginia was saying, we may want to narrow that a little bit, just in terms of things like, you know, access by the disabled, posting agendas, because we have a very big -- a very broad definition of agenda packets that policy bodies have to prepare. Are we ready to place that burden on a variety of different kinds of NGEs that may make it more burdensome for them? And that's why I raise the possibility. I'm not advocating one way or the other. But raise the possibility of having two categories of where you delegate authority, one if it's not quite as important, or would be a burden, we call ancillary bodies, and the others are full-blown policy bodies.

>> Susan Goldberg: I guess my burden is figuring out what's not quite as important.

>> Ed Davis: I have and Lisa and I have talked about exactly the same kinds of things that Bob raised, how you define policy kinds of decisions. The reason I think a lot of the other municipalities have steered away from, you know, the rocks we're approaching here, is because of this difficulty. I think, personally, that it's worth trying -- it's worth going a little bit beyond what the other municipalities have done. Again, recognizing, Dan and I were talking the other day, are there really bodies out there where this happens that we would want to see opened up that aren't? Are we creating, I'll repeat it again, a solution for a problem that doesn't exist. And if they're important enough, well maybe we should call them all policy bodies and not worry about the other parts of it. But I just don't know enough about the organizations it would apply to and the burdens they would -- they would create. I was a member of a nonprofit. We operated under the Brown Act rules. And it worked out just fine. It wasn't onerous. But I understand the concerns that Margie has, too.

>> Susan Goldberg: I guess one of the things that I always come back to is my true belief that government, whether that's the official elected government, or a business or a group, has to perform governmental functions, that all of those groups will adapt to the rules that you give them as long as they understand the rules you give them and it's fair.

>> Ed Rast: Go ahead.

>> So if we were to just delete the word primarily and anybody who falls into one of these three categories, then that does include the garbage companies, the sharks, if some airline wants to take over a terminal, their meetings have to be open to the public. I'm not watching out for the little guy. I am just

wondering how many entities would have to do that. RFP.

>> Ed Rast: Dan McFadden.

>> Dan McFadden: I'm hesitant to get into this. This is sort of a Gordian knot. What is the intent here? What are we trying to solve? I'll go back to Ed's issue, a solution looking for a problem. Something we don't want to handle in the open forum, put it out to an ancillary body so it can be handled without open discussion? I'm not sure. You say delegate authority. Authority for what? Is this authority to carry out services that is covered by a contract? Bob says, anybody can violate a contract, no question about it. You have to have contract oversight. Is that it, or is it a matter of discretion, that this ancillary body exercises discretion? They can actually take off in a different direction or create a direction for themselves outside a policy body? I keep going back and forth. And maybe what we have to do, this sounds sort of sloppy, is put this in here, try implement it and try to define it. I don't know where it applies. I don't know how many bodies it will apply to. I'm trying to figure this out. I don't think there's any resistance to this. As some members have mentioned here, the Brown Act isn't that burdensome. If we want to try it then I think you should propose to council that you want to try it. I don't think we can cover all the unintended consequences in this forum. I think it's very difficult.

>> Ed Rast: Bob Brownstein then Ed Davis.

>> Bob Brownstein: When I suggested that primarily be removed, it wasn't to make the argument that under absolutely no circumstance would there be any exemptions. It was that primarily is from my perspective, a way of cutting these groups that I don't even understand, and we don't really apparently know where it came from. I think if we want to get the kind of oversight that I think the public wants, we want to cover the outfits that are doing things that are important, and that are big essentially. And if you're going to make exceptions, and I think we should, the exceptions should be for groups that are doing things that are -- I mean, I don't want to say that you know, somebody who's teaching finger painting to some little kids is not important. But there are groups that are doing things that are not important in that sense. They don't involve a lot of money, they don't involve maintaining competitive infrastructure, or health and safety. They're little NGEs. In those cases, that's where it would make sense to take the risk. We're not going to be demanding all the Brown Act requirements. That's where I think the ancillary body comes in. We ask much less of those groups. But when you are talking about, you know, million dollar contracts, when you are talking about groups that are managing major public facilities, and you know, the reality is, delegations of authority is an area of public policy that is expanding, not contracting in the United States. So when somebody says, are we trying to solve a problem that doesn't exist? I don't think that's what's going on. I think we're trying to see the trends that are occurring in public action, and we are trying to avoid the problems that we have been embarrassed about in the past in San José.

>> Ed Rast: Ed Davis and Ken and Nanci.

>> Nanci Williams: I want to into to something.

>> Ed Rast: I'm sorry, Nanci.

>> Nanci Williams: The small garbage companies versus the large national companies, I think we're getting into a situation where most of these contracts are with local entities who probably won't have much of a problem. I don't know, we're limiting the City's ability to get the best price and the best service if basically we're discouraging anybody who is a corporation based out of the East Coast who might have a better way for us to do something here because they're going to look at our sunshine requirements and say, I can't meet those. Anything that is going to discourage privatization of these things wouldn't necessarily be for the good of the city.

>> Ed Rast: Ken Podgorsek.

>> Ken Podgorsek: Ken Podgorsek. The more I hear the conversation stair at the language, I realize the

conversation that we're having has nothing to do with the language. I want to read the first criteria. A board or other multimember body that governs a private corporation, limited liability company or other entity that, forget the word either but either, is created by a policy body in order to exercise authority delegated to it by a policy body. Norcal is not created by any policy body. Norcal is a private corporation that is contracting with the city. They would not be subject to this.

>> Number 3.

>> Ken Podgorsek: That's my problem with number 3. What you do is, this would be my thought. If we didn't want to cast that net, what you do is you take out the word "either," you add the word "and" to number 1. You combined 2 and 3, exercise authority delegated to it by that policy body and exists primarily to, what are primarily or not primarily doesn't make any difference, exists primarily to exercise authority that has been delegated to it by a policy body or receives funds from the city and has on its governing body a member with full voting rights. What that does is set up a very set criteria, it's very clear that 1 and 2 have to qualify and in 2 there's a double qualifier in it.

>> Ed Rast: I think your earlier comment was that in number 3, has on its governing board a member of the policy body or that member's designee with full voting rights. Somebody said, in that person's official capacity or some other comment. Because otherwise you basically cut out anybody on a policy body being on this as a volunteer without triggering this.

>> Ken Podgorsek: I'll make a very simple example and I'm not saying that you could probably make a legal argument if this doesn't apply but the fact that you'd even have to make legal argument is the thing that concerns me. Let's say a member of a council staff from a district is a member of the board of their neighborhood association, and it's not in the same district, council staff in another district, that what their neighborhood is in. Let's say that neighborhood association receives a cap grant, a small grant, usually a couple thousand dollars. I agree with you reading that this does not apply. The question is, though, is there will be people that will read that and say, well, does that apply and it creates the situation. What happens is you discourage good people from doing volunteer work out in the community by just having to create that step. And to be really frank with you, I know Rick's not here, I could see the city attorney's office saying, well, maybe we shouldn't go that way. That's my concern.

>> Ed Rast: Easy Davis.

>> Ed Davis: I think we can address Ken's concern with respect to the language of that particular item. I think the bigger overarching issue is the issue of how you define the type of function that is delegated. And it's not easy, as we've seen. Because you don't want administrative tasks to turn into an access kind of an issue. One of the ways, and I'm not suggesting this language, but you know, Dan was wondering, what are we trying to do. When I was trying to initially work with this, the notion I had was, and it's creating another definition, is that when it's delegated a primary government function, okay, and then the issue is, well, what's a primary government function? Well, if you -- if we can reach some kind of consensus about what a primary government function is, then it might solve the problem. Just some ideas that I had is health and safety, the direct or indirect expenditure of city funds in excess of X amount of dollars, land use, the City's pointed out to me that land use really isn't appropriate because the city never delegates authority for land use. And there may be others. I've been cheating over here and looking at Bob's notes and saw that he was, you know, thinking along kind of the same lines, and had a list. Now, I don't know if this would work, but it might solve our problem, that we don't get involved in dealing with the garbage administration and that type of thing. If we -- what is delegated, whether you call it a policy function or an essential primary government function, and then you have a list of A, B, C, D, E, and then maybe do it on a trial basis and see how that works.

>> Ed Rast: Tom Manheim.

>> Tom Manheim: Tom Manheim. Health and safety goes directly to the garbage collection.

>> Ed Davis: Yes, Lisa says the same thing so --

>> Ed Rast: Dan. [off microphone]

>> Dan McFadden: I like where Ed's going with this. I don't think that from the administration's point of view we have any problem with this, we need to explain it. I still come back to the discretionary authority, and I think that's where you're headed with your criteria. And I'm stumped on this. I think we have to try to get this as clear as we can here, and then move on. We have to muddle through on this one. We just have to put it out there and try to perfect it as we go. Because I don't know that we can come up with the kind of answers, I don't know that we can dial this in with a definition, I think it's really difficult.

>> My initial idea, before I got to the primary body function, if it's doing it in public, the NGE's doing it in public, that's what we're talking about. I understand how difficult, believe me a Lisa has done a good job of educating me how difficult that is to put into place.

>> Ed Rast: Let me get a clarifying question. You or Lisa. When the city sets a contract, either a department head or a policy body, setting, defining that contract, maybe I don't understand it but in doing a contract, how can you designate, or have a policy authority designated down to somebody else? Because, you know -- is that possible?

>> Lisa Herrick: Lisa Herrick city attorney's office. That's what Ed and I have been discussing, the whole issue he's facing, the solution without a problem. We don't believe city contracts --

>> Ed Rast: Designate policy.

>> Lisa Herrick: Designate policy.

>> Ed Rast: If somebody has a contract with Greenteam, somebody is the oversight that has policy authority and they contract, either the department or the commission or a committee, contract with them, they are, even though Greenteam is putting together budgets and everything else, they don't have policy order, they don't have the authority to accept it because they make recommendations and it comes back. Whoever that is, environmental services is the one who is setting the policy or it goes to somebody above them. At least that would seem to me, although you know, one of the things I'm looking at is when we start into this conversation, we originally came up with 63 policy bodies, and now when we start into this, we're coming into a couple hundred, probably, nobody knows. It was going to have three-day notice and agenda items and everything else. And the policy body was going to have 10. So it's a greater butter, so to speak. And I'm just getting concerned, and I would agree with Nanci, that we may be headed into a situation where we may be putting a tremendous workload and burden upon not only the city, to not gain an auxiliary lot, but also anybody we try to contract with or we deal with. And that's just troublesome especially when we look at our tax situation, our staffing situation, and some other things. But you know, it isn't that we're not trying to get to openness, it's what burden we're putting on and what we are achieving for. Bob Brownstein and then Nanci.

>> Bob Brownstein: I like the direction Ed Davis is going in. It's the direction I was thinking of myself. If the task force likes that direction, it is most useful to be referred to a small subcommittee to be working on. Some of the points that were raised by other task force members, in relationship to the city's ability to attract bids from numerous entities. There are body out there, for want of a better term I'll call them bottom feeders. They leave havoc in every municipality they touch. If we can discourage them from coming to San José and they can do their damage elsewhere I think that is tremendously to the good and would be one of the major achievements of this effort. I mean, if somebody is basically saying I won't come to San José because I don't want people to be able to see what I'm doing, that's a message that I think we should hear and understand what it refers to. In terms of the impact on city staff that Ed Rast mentioned, I actually think the kind of approach we're going towards will reduce the staff demands,

because in the absence of public oversight, staff oversight has to go up. If you can't have, you know, everybody watching, if you can't have the reporter in the room, the neighbors in the room, the people who are impacted there watching, then somebody has to do that. We are really encouraging a situation in which the public is not well served. And in the absence of citizen oversight and community oversight the only people left is staff oversight, and then their responsibilities increase significantly. And the history of seeing what happens when authorities delegated, suggest strongly that in most cases staff get overwhelmed. Nothing to do with the quality of the staff. It's just that there's too much stuff, there's toooful -- delegation starts to be excessive, they can't keep track of it, and then the consequences are bad for the public, bad for staff, because they end up holding the bag, why weren't you on top of this, it's too much for anybody to do. If others have trouble with attention, we do too.

>> Ed Rast: Dan.

>> Dan McFadden: Dan McFadden, City Manager's office. Two things. Could we admonish the City Council -- that's a poor term. Could we ask that if they set up an advisory body that they extend the public noticing requirements to that body? Because that's a lot of what happens here. Decisions about park programs, or community centers, or you know, whatever, that they set up a group for advice that we have some kind of requirement, and then it has to come back before council and be heard. I'm still having trouble with what the issue is here. And I'm trying to think of there's a more informal way of getting -- casting the net so that you capture your concern here, which is to make sure that things are not done that exclude the policy issues and do not exclude the public. The other question, I just throw this out, I'm assuming in talking about this requirement for ancillary meetings, you're only talking about the Brown Act, not the public records act. The noticing is a little confusing, we don't know on that. The records requirements would be very burdensome. So I just put that out there.

>> Ed Rast: Susan and then Margie.

>> Susan Goldberg: Thank you. I don't know if this is a good idea or a bad idea. But if one of the things that we're concerned about is creating not an overly burdensome condition on some, you know, small little group that's got a small city grant, I mean, maybe there would be a way to divide it up by the number of amount involved, the amount of city morn involved. I don't know what the right amount is, but as Ken says, with a small grant, parks group or something, maybe they have something lesser, three-day Brown Act requirement. If it's a darn big contract, here in the age of outsourcing, I think that a big contractor with multimillions of public dollars at state, both can handle, can handle the agenda, and noticing requirements, as well as should be able to. And it's just the right thing to do.

>> Ed Rast: Ken Podgorsek and then Nanci. I'm sorry, Margie and then Nanci.

>> Margie Matthews: Bob, I can't believe that a big private concern would open their board meetings to the public. Every board meeting open to the public, with facilities big enough for anybody who comes. I'm not in the business sector but maybe you can educate me. I keep honing in on it's the policy decisions that have been delegated not administrated. They have to have a public meeting once a year, twice a year where they discuss policy and everyone is invited. But every weekly board meeting of every entity doesn't feel workable to me.

>> Ed Rast: Nanci.

>> Nanci Williams: This assumption that if you're a small nonprofit you're good and therefore would never misuse or abuse city funds, and if you are a big corporation you must be bad and therefore are going to do all sorts of awful things the taxpayers of San José should know about. Several of the scandals I recall reading about in the last year involve very small nonprofits misusing city funds and city facilities, as I recall. To say they're small and because they don't have a lot of money they shouldn't have to have any sunshine on them is going the right direction I think. On the corporate side it's not so much, well, they're a

big corporation, we should leave them alone, it's just that they won't come to a city that has a sunshine law that makes it difficult or impossible for them to do so.

>> Joan Rivas-Cosby: Joan Rivas-Cosby. When we're talking about ancillary bodies way back when, I'm wondering if we are not mixing apples and oranges, as Margie said, they are doing administrative functions for whatever they chose to do. So in some ways I think we're mixing the two entities a little bit.

>> Ed Rast: Susan, then Dan.

>> Susan Goldberg: It's not that big companies are bad and small nonprofits are good, you're exactly right, there have been pretty spectacular scandals involving small nonprofits. I have real trouble believing that a contractor who wanted a big contract in San José wouldn't come here because they had to give notice and have a meeting. I just don't think that that's all that difficult. I don't get why that would be.

>> I think it's the assumption that their board meetings need to be public. It's not that they're not willing, in many cases, it's that they're not practical.

>> Ed Rast: Dan Pulcrano.

>> Dan Pulcrano: Is what we're worrying about, whether this should be included in a policy body or ancillary groups? These two groups seem to include these in the layer body section not the policy body section?

>> Ed Davis: It's really a two-step analysis. First of all the question is, do you want to have a degree of openness to any NGE to which policy authority has been delegated? That's question number 1. If the answer to that question is yes, there are two ways you can do it. You can define them as a policy body by eliminating the word primarily, or if you decide that the full blown access requirement of the Brown Act or the sunshine ordinance is too onerous for this particular kind of body, then you define indemnify as an ancillary body. So that would be the logical process there. And Margie again, to try to answer one of your questions you raised, because you always raise very good ones, when I was thinking about the -- what I called a primary government function, which is a purely policy function, not an administrative function, purely policy function, you made define them -- and again, cribbing off of Bob's notes here, he defines it as a core city service, exactly the same kind of notion. That the openness requirement would only apply when the nongovernmental entity is discussing those kinds of issues. So you're not talking about opening up General Motors board meetings, it is only those very narrow topics that are covered when they're open again. Again, the notion would be, what would be open to the public if the policy body were doing it, have to be open to the public when the NGE does it.

>> Ed Rast: Ken.

>> Ken Podgorsek: And then Dan.

>> Ken Podgorsek: Ken Podgorsek really briefly. We need to narrow down what our intent is. We are talking about entities that are not created by policy bodies, but that the policy body contracts with. Totally different thing than what this -- this is very clear, is created by a policy body. The last time I looked, Norcal, Team San José, were not created by any policy body in the City of San José. They bid on a contract and they accepted a contract. The way I read this language, they would not fall under this language. If our intent is to have those bodies fall under that language, then that language needs to change. If our intent is to only cover those bodies that are created by the government of the City of San José, then -- our discussion is off-track.

>> Ed Rast: Dave Zenker.

>> Dave Zenker: I might regret this but I'm taking off my public hat. Our contract when it was resigned for the 19th time, we were asked to basically open our books, become a completely sunshined contract, and it was one of the best things that we ever did. Every penny that we make is audited, I can say basically every meeting that we attend is Brown Acted, because the -- basically every meeting that we go to is a

county meeting. I mean we don't have private meetings. Pretty much every meeting we attend is a open meeting or government meeting. I don't really agree that businesses are going to be scared away by this. I think it's a great way of doing business. Frankly, since we've done it it's the most refreshing way I've done business in 17 years in the industry. For the public to see what we do, our response times are public, everything is online, everything is available for the world to see and I think more businesses need to do it. I don't think that people, especially that are doing private -- or primary government functions that we're doing, ambulance services, when people call 911 they want to know that you're doing your primary government function. People need to see that. I think what we've discussed here is core governmental services, things that have been delegated to private entities, they are going to be more and more and more and how we are going to bring sunshine and transparency to these, ultimately I think the definitions you've given here about health and safety, direct indirect expenditures, I don't know about the land use one is probably where we should focus. But from our perfect, having provided services in this county and throughout the Bay Area for a long time, under the provisions of our contract, we don't make policy decisions. That's under the Board of Supervisors or whoever our contract holders are. We don't make policy decisions in private. Every time a policy decision has to be made it is done at the Board of Supervisors level.

>> Ed Rast: You're saying in effect your firm would fall under the ancillary definition, it would have -- since we have defined potentially because you don't make policy, that's the difference?

>> Dave Zenker: We don't think we do.

>> Ed Rast: You put a budget together that is referred to a policy body.

>> Dave Zenker: Gets approved.

>> Ed Rast: Is approved by the policy body. You have the standard and everything else but not the extended one, the policy body that would have ten days, you effectively from what we understand, your company if it contracted with San José for a similar service would fall under what we're talking about is an ancillary definition. Good. Bob Brownstein.

>> Bob Brownstein: First, in response to Ken's point regarding the terminology about created, Ken's absolutely right. I'm suggesting that language be modified. Because I think that's much too narrow. That creates a situation where, if a government entity decides it just wants activities to be done out of the milk eye instead of creating something, they -- the foreman, somebody outside who initiates the nongovernment entity instead of having it created, and then it's closed. I do think we're going to need to do some more work on this issue of what's administrative and what's policy. Because I remember when I was working in -- for a Santa Clara County county supervisor and the word changes made in ambulance service, the issue of where the backup ambulance was located in Santa Clara County, a lot of people who lived in the county viewed that as a life and he death situation. They called up and said if you don't leave it in this area, you're guilty of premeditated murder. That's heavy to do. If people are going to feel that way about a decision that's a decision that ought to be made in public. Whether you're going to have them happy or not, it shouldn't be behind closed doors. It should be in a place where people would see what it is and why it's being done. I want to make sure they have a chance to see that and not find out later because it was under the cover of the deafness of administration.

>> Dave Zenker: There are a number of corporations that do make those kind of decisions, oversee the contract holder. At the city level those -- we're going to circle around and find there are policy bodies in place that have oversight for most of these things.

>> Ed Rast: Nanci Williams.

>> Nanci Williams: Every time we get off track on this, it seems to mean, is the garbage company included in this or not? Do we want to include them in that? Health and safety, that's the garbage

contract, is it or isn't it? And do we want it to be.

>> I'll supply the real world example. Are there commissions that oversee aspects of the garbage contract?

>> The City Council approves the contract as city staff administers the contract. EMT so the policy body is the City Council. So the Department of Environmental services puts it together, and there's nobody in between the two groups?

>> It may go to a council committee. I'm not aware of any commission. Is anyone else?

>> When you say no one -- Dan McFadden, City Manager's office. We do have contract administrators that are supposed to monitor and make sure the contract is conformed with. So that's an ongoing process.

>> Ed Rast: One of the things you deal with in cities is there is a commission or committee that interfaces between the department head, the department and the people looking at the contract and the City Council. Because then it is referred to a committee or a commission and from there, that then would be the policy body, referring to the other policy body, City Council itself? In many cases, that's normally where the oversight is done. Tom.

>> Tom Manheim: Tom Manheim. One of the changes mayor elect Reed is talking about is changing the committee structure. Over the years, the committee structure is -- when I'm talking about the committee structure, the council meetings individual council meeting, it is a more detailed conversation. Mayor elect Reed has made clear that he is looking to change the committee structure and I think those more actively. We are expecting that to change next month.

>> Ed Rast: Let me clarify something. In the past it's been up to the discretion of the mayor and the City Council to either use that committee structure or not use the committee structure? If there's nothing, they can just decide they want it or not want it? The committee structure.

>> Dan McFadden: Dan McFadden, that's essentially true. The rules committee can direct how they're going to handle things. In the past, those subcommittees before things went to the council. Discussed those issues at length. That's a filter for the council. I think that's what Tom is talking about, that the mayor-elect he intends to move back to that model. In most places in the city, where we have a policy involved, something like a tree-trimming contract or an asphalt laying contract, a garbage contract, whatever, scope of services go out, there's a bid, contract evaluated, implemented by the council. We really don't have an intermediary body involved with the administration of the contract.

>> Ed Rast: The City Council would then set policy, not the department.

>> Yes, I would say that in most cases, the City Council would set policy. We view ourselves the administration, not a policy organization or policy body. We carry out the issues of the council so any issues of public input would find their way to the council I believe. Almost in all cases.

>> Ed Rast: Let me continue for a second here. Under the prior committee structure, or the one that mayor elect Reed is suggesting, would those committees now assume a policy role?

>> Yes, they do have a policy role now, the council committees. This would be a much broader role, in evaluating any item coming to the council.

>> Ed Rast: Okay, Dan Pulcrano.

>> Dan Pulcrano: Yes, I think this has been a very productive discussion and I also think that our legal team did a really good job of defining this section. We've got to move on and unless we're going to be meeting through the holiday season in order to get the mayor elect something on his desk early part of the year. So what I'd like to do is propose a motion that we accept the definition proposed of policy body by the legal team as drafted, with the one recommended change, removal of the word primarily and that's a motion.

>> Second.

>> Ed Rast: Second.

>> Bobbie Fischler: Bobbie Fischler.

>> Ed Rast: Question? Virginia Holtz.

>> Virginia Holtz: Virginia Holtz. I had a question. My question is, when contracts are being worked on, by the staff, and obviously the staff and then you said there is an oversight committee that reviews contracts. Do councilmembers receive these contracts, or are any of the councilmembers involved in looking at those?

>> Could we answer that offline and maybe talk to the motion?

>> Virginia Holtz: I think he could say yes or no.

>> Ed Rast: Dan McFadden.

>> Dan McFadden: Normally not. You know, contracts are very thick documents. There's a page of actual active items in there and there's a whole lot of boilerplate. And so it's normally covered in a discussion, or in an executive summary. Tom has --

>> Tom Manheim: Just a comment on contracts, to give you a feel for what Dan's talking about. This is an appendix to a contract. So I mean, contracts can be huge. And so they -- the council approves the overriding policy, the goals of the contract. They can certainly review the contracts if they so choose. But it's really the work of the staff to work on the contract not the work of the council.

>> Ed Rast: We had a motion made. Bob Brownstein.

>> Bob Brownstein: I will support the motion. I will put together some suggested exemptions based on scale and function. But to move it along, let's go.

>> Ed Rast: Additional discussion. Margie.

>> Margie Matthews: If you can put it in an additional motion, I can probably support it, but it's way too broad. It includes every body that receives money from the city, the way it's written or every other entity.

>> Bob Brownstein: It's the motion as stated, with -- with an amendment with details to be determined that will have some exemptions based on scale and function.

>> Margie Matthews: Okay.

>> Bob Brownstein: Is that okay with the drafter?

>> Ed Rast: Dan?

>> Dan Pulcrano: I'd welcome your comments on it but I think our legal team did a really good job of drafting this. And you know, I'd like to vote on it as it is.

>> Bob Brownstein: Okay.

>> Ed Rast: To remind everybody, when we get the section done we're going to take another look at it. So we have another opportunity at that time to come back, and we have another opportunity after that to look at it.

>> Eva. This motion eliminates the word primarily but doesn't include the word either, was that your intention?

>> Ed Rast: Counsel, Ed Davis.

>> Ed Davis: The reason the word either is in there is because the Brown Act that we modeled this after only had two parts. And when it was drafted, we forgot to take the word "either" out so it was a typo.

>> Delete the word either.

>> Ed Rast: Let me ask the maker of the motion. There was a discussion of adding and in, or potentially the order of acting in official capacity for the member of the policy body. Which addressed the question that if we didn't do something like that then we might preclude members of policy bodies from volunteering for various organizations. Did you want to or not include some of those comments?

>> I just think in the interest of time I think we should just approve it clean as drafted. And maybe address that at a later date.

>> Bobbie Fischler: Call the question.

>> I still have a comment. Just so you know I support the concept, I don't support the motion. I think that -- I think putting forward language that we -- that there are still members of this committee that have concern over the language, and where that language reaches, is a bad precedent. You could say we're going to come back to it again. But that's not what the motion says. The motion is an acceptance of the language as it is. A friendly amendment was suggested to the motion, it was rejected, that would allow for that further review. And I could accept that portion as part of the motion so we can take another -- we take a look and clarify some of the concerns. But with that, just my comment is that I can't support the motion as a black-or-white motion which is exactly what this is.

>> Ed Rast: Susan Goldberg.

>> Susan Goldberg: I guess I would ask the motion-maker whether he would reconsider accepting the friendly amendment, which I think there's a great deal of support for here.

>> Could you restate what that friendly amendment was?

>> Bob Brownstein: The friendly amendment is --

>> Ed Rast: Bob Brownstein.

>> Bob Brownstein: Bob Brownstein. The friendly amendment is to state that the language we have in front of us would include an additional amendment with full details to be submitted later, that will provide for exemptions based on scale and function. I think the consensus of the body is a good thing to get on this.

>> My opinion is that it weakens it substantially and that we're passing a potentially much weaker ordinance than there are in other cities. However, if it's the will of this body I'll accept the amendment or we can vote on the amendment.

>> Ed Rast: Susan Goldberg.

>> Susan Goldberg: It doesn't weaken it substantially, it just draws some lines.

>> That's fine, I'll accept it.

>> Ed Rast: Second? Further discussion? Call the question, all in favor? [aye]

>> Ed Rast: Opposed? Abstentions? Passes. Just to remind everybody, Bobbie, you'll --

>> Bob Brownstein: I'll do it faster.

>> Ed Rast: When we get to the end of the public meeting, we'll have a chance to look at this before we read the final document. We're getting close to 7:45. You've got the report to the council on the Reed reforms. Sheila, could you clarify something? In our conversation there was an issue in trying to get the staff report so we would be ready to go on, I believe it's January 9th. And because of the holiday, there was an additional earlier requirement to get the staff report in.

>> Sheila Tucker: Yes. Sheila Tucker City Manager's office, that is correct. We would wanted to have that staff report in earlier this week.

>> Ed Rast: So that would have meant that we would have -- to be able to get on the agenda we would have had to have the staff report in on -- okay, so we had the study session on Thursday, we would have had to have the staff report in on Monday because of the holiday, correct, and that is an internal city administrative requirement, certainly not a Brown Act requirement.

>> Sheila Tucker: For a staff report, correct. That does not mean that Reed will not come forward on January 9th with an item.

>> Ed Rast: Dan McFadden.

>> Dan McFadden: I believe the deadline to have a staff report in beyond the 9th is the 15th of

December. So we have a little bit of time to put it together. But because of the holidays, that's the cutoff for the 9th.

>> It would have to be finalized by the 15th.

>> Ed Rast: Okay. So we would have enough time to do it, then?

>> Dan McFadden: Yes.

>> Ed Rast: Dan Pulcrano.

>> Dan Pulcrano: Yes, I just wanted to ask Dan McFadden. It's kind of like a mathematical thing, in your memo the way you organized it, didn't seem to add up to the same way I counted it. I had counted, and I think I went through this with Sheila, that about eight of the Reed reforms, let's say we had handled in some way, we referred two back, there were two that the mayor-elect indicated that he felt had weather been dealt with by the so-called Norcal rule, which were two items, the two items that had already been addressed, and then I believe we had eight, I don't have my notes in front of me, but I believe we had eight items that we had either approved, including the four at the Saturday session. So it sounded like you know, when we go before the council I think we need to indicate that more than, you know, approximately half of the items in his sunshine section have been dealt with. And then the other half have been organized into our work plan.

>> Ed Rast: Dan McFadden.

>> Dan McFadden: Dan McFadden. Let me respond. I think there are 18 in total on that section of the Reed reforms, 4 through 21. And in looking at it, it seemed like three of them dealt with the things that the election commission had dealt with, the lobbyists and et cetera. And the rest of them, we had touched upon the other 15, two of those were questions that the administration had concerns about. One was mentioned at the study session, and Councilmember Reed responded to that. That was the releasing terms of employee contracts as they were made. And the other involves privacy rights which is the subject of litigation between the city and the Mercury News. So those were the two. The rest of the 15, the remaining 13, we're talking about math here, seemed like items that we had covered and agreed within the task force. My memo is just saying, let's take another bite at the apple here and see if you're in agreement with that. I know when you went through it and you went through it quickly at the meeting, you had eight I believe as you're saying. But in looking at it there were more that we had actually covered and that the task force had expressed concurrence with. That's the intent of my memo, Dan, okay? So the question is, is 13 the right number? I think the idea was to try and move these in response to the mayor-elect's request to him on the 9th and move as many as we could.

>> Ed Rast: All right, so does it make sense, we have the consensus of the task force we just go down through the items? It's relatively quick. Read each one. Number 4, adopt the sunshine ordinance, make it easier for the public to know their rights and what the city is doing, in consensus we agreed to that.

>> On Saturday, yes.

>> Ed Rast: Prohibit late staff memos, fully participate in the debate.

>> We've dealt with that.

>> Ed Rast: All right. Number 6, require the mayor and the councilmembers to disclose material facts before the council takes action.

>> That was dealt with by the Norcal rule by the council itself.

>> Ed Rast: All right, that's in effect we agree with that. Bob Brownstein. I'm sorry.

>> Bob Brownstein: I think the council is dealing with this I presume and hope that somebody is going to provide a definition to people who have to file this, what the term "material facts" means. Because I don't know what it means. Bob Brownstein. I think we have to give guidance to people so they will do the trite thing.

>> Disclosure of material facts. The council has already passed a policy on it which probably preempts anything we do anyway. The mayor elect feels that this is not something we need to take action on because it was already dealt with at the council level.

>> Ed Rast: Okay, all right. So number 7 was referred back to the elections commission. Number 8 requires additional discussion which is disclose all offers made to city unions for pay or benefit increases when the offers are made. Bob Brownstein.

>> Bob Brownstein: That was going to require a substantial amount of additional discussion, as stated here, it is probably a violation of Miles Millers Brown state elections code. There is probably another way to skin the cat.

>> We don't have to discuss that here,.

>> Ed Rast: Number 9, disclose the names of people serving on advisory committees.

>> I thought we'd do it now.

>> Ed Rast: All right, so we have consensus on that. 10, make broader disclosures of what the council does in closed session.

>> What does that mean?

>> Ed Rast: We've made progress, we've accepted some of them already so we agree on that one. Number 11, prohibit closed door meetings for city task forces committees and commissions.

>> We took care of that.

>> Ed Rast: Post notices for committees, ancillary bodies online. I assume --

>> Advisory bodies, not ancillary.

>> Ed Rast: I'm sorry, advisory bodies. So we have agreed on that one.

>> Yes, we've agreed to that.

>> Ed Rast: Number 13, required additional discussion, which was so we'll continue to discuss that, disclose the salaries of all city employees by position.

>> Isn't that going to be solved by litigation?

>> Susan Goldberg: No, I think we're going to discuss it in the milk record.

>> Got it.

>> Ed Rast: So that goes to public records for later discussion. Number 14 --

>> Bob Brownstein: 14 also I think should go to public records for additional discussion.

>> Yes.

>> Ed Rast: Okay, so we've got 8, 13 and 14 going for further discussion. Okay. 15, let's see, 15, disclose actions taken on complaints received about fraud and abuse.

>> Was that handled by staff? Okay, that's been a staff item.

>> Ed Rast: Okay. And 16 disclose appraisals used in condemnation of property after terms of agreed to.

>> I believe we agreed to.

>> Ed Rast: So we have consensus on that one. 17, record all council closed sessions electronically and make the information available after the reason for secrecy is passed.

>> That's what we talked about.

>> Ed Rast: We talked about audio recording.

>> Susan Goldberg: Actually I thought we agreed to that.

>> I thought we had said there were some things that were probably --

>> There are some things that may never see the light of day but not --

>> Will never pass.

>> Ed Rast: So have we completed that or --

>> We need to go bark.

>> Ed Rast: We need to go back and further discussion. We've agreed to in concept we've agreed to it. We've agreed on the audio recording of it but we still have to go back and talk about when we released the information and under what terms. Okay. So number 18, store archival copies of e-mail that will allow for easier public review.

>> We haven't discussed that but I was thinking, that's an administrative matter. I was just thinking how big that computer file would be. And I'm thinking -- do you think these meetings would be boring? Oh, boy.

>> What does that mean?

>> Staff acting on that.

>> Ed Rast: Dan McFadden. You're speechless.

>> Dan McFadden: You know, I really don't have an answer for you on that. I don't know. We haven't spent any time on that and maybe I glossed over that. I don't know. I think we may have to come back on that one and give you a more specific answer. It sounds good in concept.

>> Ed Rast: You don't have enough hard drives to keep it on.

>> Dan McFadden: I would think we're going to upgrade our software. We plan to do that as part of this effort. I'm not sure -- you people that are a lot better than I am know the state-of-the-art as it exists now in the city and what the possibilities are to improve it. I can't really respond to that.

>> Ed Rast: Further discussion? 19, plug the loopholes in campaign financing, and 19 has been referred. 20, plug the loopholes in the lobbyist ordinance that allow many lobbyists --

>> That was referred.

>> Ed Rast: And 20, disclose the calendars of the mayor and City Council. We've had a discussion but not finished that discussion.

>> I thought it was three-day, Monday-Thursday.

>> Ed Rast: We didn't agree on content, we didn't answer the question of whistle blower. We agreed on content but some of the issues need to be worked out.

>> We had agreement on timing.

>> Ed Rast: We had two agreements on timing. One was three-day and then there was Monday-Thursday. We need some additional definitional discussion.

>> We need to work that out some more.

>> Susan Goldberg: I actually thought there was some good questions raised on that about the joint meeting.

>> Ed Rast: About once a week.

>> Susan Goldberg: There was one issue. I thought Dave Cortese, who raised the issue about what do you do to hallway meetings. I actually have a proposal on it. We can go back to it.

>> Ed Rast: We need some additional definitional discussions.

>> It's -- they have been disclosed, nonetheless. So the details of whether it gets disclosed three days, three calendar days or working days, they are disclosed so --

>> Ed Rast: There were still some additional unanswered questions. There was the mayor's letter --

>> The mayor-elect expects us to make technical corrections in drafting. He's asking that we simply indicate that we approve in concept and we'll talk further.

>> Dan McFadden: Dan McFadden. Prohibit closed door meetings of city task forces, committees and commissions. We pointed out there are seven city bodies that are authorized for closed session, development, City Council, and then the retirement boards, police, fire, normal city retirement board, and civil service commission. All those deal with personnel and health issues. So I don't want to -- I don't think that -- I'm trying to read the intent of this, that Mr. Reed has, and I think we're saying, we endorse the

intent here.

>> Ed Rast: We need to go back and name those seven.

>> Susan Goldberg: Actually, I think there's a little bit of discussion underway right now about the retirement board meetings. They have been open, I mean, we've -- you know, we've covered them.

>> Ed Rast: But do they have closed meetings?

>> Tom Manheim: If I could clarify, I believe what Mr. McFadden was saying, they have the ability to go into closed sessions, not that the meetings themselves are closed.

>> Ed Rast: All right, we have accepted those with the modification of the seven committees that have closed meetings?

>> Yes, that would be fine.

>> Ed Rast: So that may not meet what his original intent, I guess there's a question on clarification, was he aware of those seven or was it his intent to have all of them opened back up genetic to include --

>> My sense is, it is, but this is a statement of intent.

>> Ed Rast: General intent.

>> Yes. I think he's aware, and he sits in closed sessions of the council and the redevelopment agency, and I'm sure he's aware that personnel matters, those boards have open meetings with agendas but they adjourn to closed sessions on questions of -- privacy questions, yes.

>> Normal Brown Act exemptions.

>> Ed Rast: Additional discussion?

>> I think we've covered that.

>> We've covered that one.

>> Ed Rast: Okay, let's go back. Okay, so we've covered item number 5, and number 6 is staff reform, referral recommendations, okay, we did that one three minutes ahead of time.

>> Sheila Tucker: Sheila Tucker City Manager's office. So before move on now that we've discussed the task force recommendations on the Reed reform referrals, what is the intent moving forward into the January 9th meeting? Is there going to be a memo to the City Council on behalf of the task force? Did you have a --

>> I think we could encapsulate just away we ticked off.

>> Sheila Tucker: There is a expectation that staff will draft a memo from the task force on the recommendations we just discussed --

>> Ed Rast: The ones referred to us -- the ones from Vice Mayor Chavez and other councilmembers referred to us, have we formally gone back on all those Dan?

>> Dan McFadden: Dan McFadden, City Manager's office. I would suggest the Reed reforms go back to city council, chair's memo, and that the other may take us a little more time to put together. We still have to do some little fine-tuning there, and that may be a harder memo to stick together in allotted time.

>> Ed Rast: Is there any task force recommendations? Bob Brownstein.

>> Bob Brownstein: I wanted to get a status of the items I discussed on the items of public interest. I think the motion though was that we should present it to the City Council at the study session to see if they had a lot of comments. They didn't have a lot of comments. To the extent they had comments, it was positive. I would like to include that as a recommendation.

>> Ed Rast: All right, does everybody understand what he --

>> No, what is it?

>> Bob Brownstein: This is items that involved a public subsidy over \$1 million and what we, I believe, agreed on was that there should be 30 days of discussion, the staff is currently working on a 14-daytime line. We agreed that it should be extended to 30, and we agreed that this should be a basic minimum set

of information that the staff generates. I went over that at that last meeting, coy go do it again. There was one point that I don't think we got closure on. Several people suggested that they thought there should be some kind of special study session, or City Council meeting, to deal with these very large items. And I don't know whether we reached closure on that. I'm certainly open to that. I think somebody suggested a study session, and somebody suggested another variation, special meeting, I can't remember exactly what it was.

>> Ed Rast: If my memory serves me, it's that if we have council committees, those items be referred to council committees for public discussion. So in other words, if there was an oversight committee of that particular contract, it goes to that and that's where the public discussion would occur.

>> Bob Brownstein: I'm open to that. There were some other ideas on the table, and the people who made them should speak to them.

>> Ed Rast: Sheila Tucker.

>> Sheila Tucker: I want to also propose another suggestion. The staff's six-month pilot will come to an end at the end of the fiscal year. Another option would be in order to more thoroughly review all of the proposals that the task force is taking exception to, that we come forward with a comprehensive report at the close of the pilot, after the first of the year, that outlines the full recommendations on all the reform proposals that the task force would like to recommend.

>> Ed Rast: And what date is that?

>> Sheila Tucker: We have not set a date. I'm saying that might be another option, to keep all the referrals together, that the task force has recommendations on as well as to report back on the close of the pilot.

>> What was the date of the close of the pilot?

>> Sheila Tucker: It would be January.

>> Bob Brownstein: This coming January?

>> Sheila Tucker: Right.

>> Bob Brownstein: This coming January?

>> Sheila Tucker: It will not be together as early as January 9th. We certainly talk about a date.

>> You won't make any changes to it?

>> Sheila Tucker: No, absolutely not.

>> Ed Rast: Discussion, Margie.

>> Margie Matthews: Since I'm a late member, I don't know what the pilot is.

>> Sheila Tucker: A list of the 22, there's been an ongoing pilot program.

>> Margie Matthews: To implement?

>> Correct, the 14. There were five of them that the task force didn't fully endorse. Bob is suggesting -- in order to have the task force fill recommendation of all those together in a comprehensive format and as we report back on the pilot that that might be a more cohesive way to keep the task force recommendations together.

>> Ed Rast: If I remember correctly, the only one we have to discuss can is the suggestion for neighborhood groups to have three minutes, but that we basically said that -- I have to remember -- that the opinion of the task force that that was going to be -- have some free speech issues, and also, for fairness purposes, we wanted other organizations to be included, so we would have to take that back and discuss how to develop and come back with a recommendation.

>> Sheila Tucker: Correct, the three referrals are the outstanding speaking time, enforcement and calendaring issue.

>> Ed Rast: Dan McFadden.

>> Dan McFadden: Dan McFadden some City Manager's office. You would think I would have it down by now. The point of the 30 days for anything over a million, I must have been sleeping a little bit Bob, but let me come back to that. I think we need to touch on that again, and if we don't, fine. I'll raise it later. But this is the agenda for the meeting next Tuesday. There's probably, Tom just looked through, there's probably 11 or 12 items in here that are over \$1 million.

>> Bob Brownstein: Dan, it away only public subsidies that are over a million. Because I made the point that they're unique, they're not plain vanilla. If it's over a million to buy two fire trucks, that's different. People know what fire trucks are.

>> I remember you saying fire trucks.

>> Virginia Holtz: Mr. Chair.

>> Ed Rast: Yes, Virginia Holtz.

>> Virginia Holtz: I'd like to make a motion to include Bob Brownstein' recommendations. I do remember them very clearly and at that point in time I felt they deserved to be included. I was trying to look at the specifics back in our minutes, and didn't find them directly. But to find those other comments that people made, that you were seeking from, and unfortunately I can't find them. But I would recommend, anybody knows of those additions that they would include -- but my motion is to include -- to incorporate his recommendations.

>> Ed Rast: Okay. Do we have a second?

>> Bobbie Fischler: Second.

>> Ed Rast: Bobbie Fischler. You were going to disseminate a list?

>> Bob Brownstein: I was going to present to the City Council.

>> Ed Rast: You made a presentation to council. I believe we asked you to give a copy to staff so they would be distributed to staff of the task force.

>> Bob Brownstein: If I missed that I'm sorry.

>> Ed Rast: I was trying to clarify.

>> Bob Brownstein: I will correct that error quickly.

>> Ed Rast: Virginia.

>> Virginia Holtz: Well, I did put that motion on the floor.

>> Ed Rast: Right, we had a second. Discussion.

>> Bob Brownstein: If people would like, I can read the list and then they can decide whether they need it in writing to vote on it or they can vote on it based on the verbal description.

>> Ken Podgorsek: Mr. Chair, Ken Podgorsek, quick question. I'm trying to go back to what staff was commenting on, that it would be probably more appropriate to take this forward in a separate memo, not necessarily with this particular memo.

>> Ed Rast: Yeah, I would --

>> Sheila Tucker: Sheila Tucker City Manager's office. That's why I brought it up, we have a very short deadline to get a memo out. We don't have strong consensus what the wording would be. Staff is going to have to work with a subgroup or subset of the task force to get a memorandum in order in fairly quick order.

>> Virginia Holtz: I with withdraw my motion.

>> Ed Rast: Ken Podgorsek.

>> Ken Podgorsek: My comments, it's sort of funny, it's a sense that the ship's not going to sail. So you know, the fact if we put this forward, you know, four weeks from now, it will be as effective and maybe even potentially because we've had more time, more effective.

>> Ed Rast: And we've had more time. People can look and reread. Susan Goldberg.

>> Susan Goldberg: Does that mean we're going to do what Sheila had suggested, come back and keep them all together? I'm worried of some of these things falling through the cracks and getting lost in the sauce here. I think we do need to -- you know, I want to go back to Bob's idea, I think we can refine calendar so it more addresses concerns we heard from council but also addresses our concerns. And we need to discuss the time of speaking.

>> Ed Rast: So we've withdrawn the motion then. Maker of the motion and the second have withdrawn it.

>> Can you clarify exactly what you're going to be giving the mayor, then? Just to report on?

>> Ed Rast: The first part of the report is the recommendations that were referred to us by the original 22 recommendations that were referred to that the staff has been working on in a pilot program for six months. And we had taken on a majority of those but I believe there are three that we still have additional discussion item on. And then a second document would be the Reed reform items that we had just finished discussing, the status of, and those that some of those we have further discussion on, some are referred back to the elections commission, but the other ones, we had had a consensus on and would send those back to council.

>> Sheila, do you anticipate this to be part of a packet that would be larger agenda like part of the consent agenda or is he actually planning a discussion for the 9th?

>> Sheila Tucker: For January? I'm not certain.

>> So we would contemplate attending?

>> Sheila Tucker: Oh, yes, I would like to know who would be in attendance on the 9th or whether there would be a staff presentation or what that would look like.

>> Ed Rast: Other discussion on it? Any suggestions? In effect what we're doing is, we're taking most of the study session discussion, putting it in a report, so that the council formally can act upon it. Am I -- that's the -- great silence. Ed.

>> Ed Davis: Just a little editorial comment here. I think you're very well advised to bunch these and take them in bunch fashion and not let them dribble in one by one.

>> Ed Rast: I agree.

>> Ed Davis: The Reed reforms are a whole package and the others are a whole package. As was said here by Ken, I don't think they have to go in together. But I think the Reed reforms we have an obligation to get those in by the first meeting, January 9th. I'm just stating the obvious, I guess.

>> Ed Rast: We have consensus that we're taking both of these reforms forward or the Reed reforms forward?

>> Just the Reed reforms.

>> We can get those out. That is a pretty straightforward memo.

>> Ed Rast: We have a consensus on this, right? Everybody shook their heads. I was hearing some heads going yes and some going no. Any further discussion on the staff reform referral organizations? Okay. Next item is upcoming agenda and work plan. Dan Pulcrano.

>> Dan Pulcrano: Yes, I just wanted to discuss the technology portion of the program, which is coming up in a couple sections. That's part 6 of our agenda proposed by the motion of Ken Podgorsek and Bobbie Fischler on July 20th. We established technology as a section. I've been doing some research so we can get ahead on this issue. Approximately three weeks ago, I made a request to the City Manager's office asking for policies and procedures, a copies of the policy and procedures that the city currently uses for the Website. I repeated the request, I hadn't received -- I still hadn't received the information. I repeated the request today in a little bit more detail specifically, trying to understand what the city does with its web operations and how it works. And I anticipate being able to have that information to the committee, probably in early January. So I'm hoping that that's okay with everybody here on the committee, and I'm

just doing a little bit of homework as a committee member, and will present the findings to the commission. Does anybody have any question about that?

>> I have a comment. Ken Podgorsek. I believe when we are discussing this I believe the City's MIS director should be in attendance.

>> Yes. I've also met with him. I've talked to his -- about five members of the city staff. I'm just information-gathering to try to get as much information as possible.

>> Ed Rast: Let me see if I understand. You requested information from the City Manager from the I.T. staff. You've also looked at council policy on this?

>> I've looked at the e-policy, the city's Website. I'm just trying to gather as much information as I can from all different parts of the city so that we have unified clear information and I can compile that into a report for the commission.

>> Ed Rast: Just to clarify things --

>> Task force, I'm sorry.

>> Ed Rast: What Dan has asked, we've asked for various task force members to take the lead on various sections in the future. Right now Dan and Ken Podgorsek are taking a lead on the public policy, Susan Goldberg and Dan is taking on closed sessions.

>> No, Susan is going to do the closed session.

>> Ed Rast: By yourself. Dan has indicated he has an interest in taking the lead on technology. We have four other sections that we need to have people take leads on. And what we came up with was a couple things. One is that Ed and Lisa will basically on each section work with the co-leads on it, develop commission questions. At the start of each new category, we'd have an expert either on city staff or outside come, and make a presentation like we had with Rick Doyle to get the conversation off and be able to focus the questions so we can stay on policy issues. So we still need some additional four more people to go in to volunteer, as the leads go. Bob Brownstein.

>> Bob Brownstein: I believe I volunteered to be a leader on budget issues, I'm still willing to do that. I think people wanted to spend some time on the aspect of sunshine policies on the budget.

>> I'm happy to work on public reports, too.

>> Ed Rast: All right. Bobbie Fischler.

>> Bobbie Fischler: Bobbie Fischler, what other areas do you need covered?

>> Ed Rast: Public outreach.

>> Dan Pulcrano: I'd be happy to work on enforcement.

>> Bobbie Fischler: I'd be happy to work on outreach.

>> Ed Rast: Sheila, we're missing one. I can't remember which.

>> Ethics.

>> Ed Rast: That gives us either one or two people on each one as leads. And then it's just the matter of establishing who the expert coming in to talk to us.

>> I'll work with Judy on ethics.

>> Ed Rast: Okay, great.

>> I would hope that if any task force members, if like Bob needs information from the city or Judy has problems, I assume that staff is O okay with those requests?

>> Certainly, staff is happy to comply with requests. Dan has asked for quite a bit of information, he requested three weeks ago from our office, there was a miscommunication in our office for which I policy. It is not clear to me, I had messed the meetings it had been assigned and then when I asked, it wasn't clear that he was doing it for the task force himself. I ask for some clarification, I appreciate that clarification from the committee.

>> Ed Rast: Sheila Tucker.

>> Sheila Tucker: Sheila Tucker, the only thing I would ask is clarifying the role between staff and the commission. Is it the intent that we would work with these leads to develop the material?

>> Ed Rast: Right, similar to what you did this week working with Dan and Ken, where Lisa put together information, and they took a look at it, the leads would potentially request information. I would like for the leads just to be clear on it. I would like myself and Dan and Ed Davis to be copied on those requests so we know what's going on along with city staff? And if city staff has a question on it they should either get with me or Dan on it. With that, is there -- Tom and Dan, does that make sense to you?

>> It does. I believe if we have follow-up meetings with the chair or vice chair, we can work them out.

>> Ed Rast: We also had a meeting just before Thanksgiving with Rick Doyle and Ed Davis and Lisa, about the procedure after each meeting how they would take a look at the issues and come back, especially if they had an issue that was -- that there was a disagreement on how they would work that out. And Ed, you're fine with the way it's working, both of you?

>> Ed Davis: Yes.

>> Lisa Herrick: Yes.

>> Ed Rast: The next item is, are we going to have another December meeting? Don't throw things at me for that one.

>> Ken Podgorsek: I'd like to suggest that we have had a lot of meetings the last four weeks. That a December 21st meeting may not be as well attended, but even then, because of the upcoming holiday, staff would not be able to really follow up on anything that we were -- we talked about that meeting. That would make our first meeting in January would be January 4th, and I think that would be a start of a -- personally I think that would be a great way to start the year and I think we'd all be ready to work and maybe some of the eggnog would be worn off by then.

>> Ed Rast: Anybody have a consensus? We are not going to have another meeting in December. So our next meeting would be Thursday, January 4th. All right. So everybody gets to recover after New Year's. Additional comments on the work plan, the agenda? Any suggestions on how we can improve the process?

>> Ken Podgorsek: Mr. Chair, just one more comment. We didn't get anywhere near on public meetings tonight, as I expected, that's because we got stuck on a definition issue again, which tends to be our catch-points at this. I do really do believe that on the January 4th meeting if we come focused and I think we got through a major part of the definition issue, I think we can finish public meetings. Because I think the real key to the public meetings is understanding who they're applied to. And what we have to get into, this was my intent tonight, and I want you just to put this in the back of your minds for the January 4th meeting. We need to get into, once we have these things defined, we need to get into what do we really want out of each of these groups? How -- how much process, how much notice, how many of these things? And what I'd like to maybe suggest is that we think about ways of use processes that are already in place in the city. Using policy bodies, one of the suggestions I was going to give tonight was for the ancillary organizations that qualify as NGEs or now calling NGEs that instead of making -- having this part of sunshine -- having them report twice a year to an existing policy body, taking -- since that body is already doing noticing, that body's already doing minutes, making the sections that they're covering as part of their contract under the definition, make them report to that policy body rather than making their own meetings open, and creating a public discourse through existing ideas. That was one idea I was going to put on the table. I'm just putting that out on the table so you can have time to think about it and then you can think about it for the 4th.

>> Ed Rast: Where the policy is actually made, the ancillaries would report to a policy body and therefore

you would have a clear division of where policy is and nonpolicy administration is.

>> Ken Podgorsek: Yes, I think we would end up wiping out an amount of concern, how I think it would work, and how I think it would serve the public well. But there's a lot of other subjects but I really want to look at the 4th, I think we can finish the whole public meeting section on the 4th.

>> Ed Rast: Joan Rivas-Cosby.

>> Joan Rivas-Cosby: Rather than have an ancillary body make a report to a public body, maybe they should have an open public forum once or twice a year.

>> Ed Rast: Virginia Holtz.

>> Virginia Holtz: If Ken had some more details, and it seems as if you do, maybe we can digest it for the 4th discussion.

>> Ken Podgorsek: I will make sure it is within our noticing requirements.

>> Ed Rast: Other discussions? We have public comment first. Public comment. [off microphone]

>> Items happen earlier in the agenda that are of relevance, what I'm concerned about is issues that have greater level of public interest, that the public comment be at a place where it can inform the discussion, rather than at the close of the discussion for the day. And I didn't know if the kind of informal practice that happened in the past where different agenda items come up members of the audience are given an opportunity to comment, are continued or not, I'd flag that, instead of there being so few of us, if there are more people, didn't want to create an unattend --

>> Ed Rast: Normally what we've done in the past is as we've got into these things we've asked for public comment and at the end we asked for public comment again. Additional public comment?

>> If I might just say, so if you have a comment on anything we're discussing you're welcome to raise your hand or approach the microphone. Because we'd like your input while we're discussing.

>> Ken Podgorsek: The only comment I could make, is there are people that come to our meeting all the time. At the beginning, the chair's opening comment --

>> Ed Rast: I'll ask them to fill out a speaker's card.

>> We have a two-minute rule right?

>> Ed Rast: We have a two-minute rule, right. Bob Brownstein.

>> Bob Brownstein: I wanted to make a comment, if people know this is of broad public interest and many want to attend, if you would let us know that, we would do a meeting, we don't have 20 minutes reserved for public comment, we do. And if we know ahead of time, it will make life easier for everybody.

>> Ed Rast: I have a question to ask of the public speaker, is there a particular area that we're interested in?

>> It's no secret, we're pretty interested in the public record issue. It doesn't necessarily draw much more outside interest than the folks in the peanut gallery so far. But Bob's comments is useful, I didn't want to create a situation where if there was greater public interest we were kind of burdening the task force, having them stay here until 9:30 or something like that.

>> Ed Rast: Dan McFadden.

>> Dan McFadden: Dan McFadden City Manager's office. We've talked about packaging that and taking Public Safety records, primarily police records as a separate item. I believe on that one we'll have a lot of debate back and forth and we'll have many more speakers.

>> Ed Rast: Thank you. Okay. Adjourn?

>> Ken Podgorsek: Margie had a motion. I'll second her motion.

>> Margie Matthews: Move to adjourn the meeting.

>> Ed Rast: All in favor. Adjourned.