

1                   When we were in the process of preparing the State of the  
2                   City Address - - and I believe this would have been in January - - and it  
3                   may well have been late January. As we prepared that address, I wanted  
4                   to make sure that the shortfall numbers that we used in the address were  
5                   accurate. The number that I believed I had understood from my  
6                   conversation with the financial team was \$53 million, or something like  
7                   that, in the way of shortfall.

8                   I came across, though, a letter to employees on our Intranet.  
9                   That's one of the ways that we communicate with employees. It's  
10                  broadcast to City employees; they have access to it. I read that the  
11                  number we were still showing, which was - - it was a very dated number.  
12                  This was a very fluid time, very dynamic time. And I think we were  
13                  learning more and more about the shortfall as we went through the  
14                  process day by day. But on that occasion, I read that the shortfall was the  
15                  \$20-plus million number. That's the number we had on the Intranet.

16                  And I was concerned about a couple things. First, I didn't  
17                  want to be giving a State of the City Address that was contradictory to  
18                  other information that we had, particularly, that we're sharing with  
19                  employees, because as much as the taxpayer is impacted, when you start  
20                  considering reductions in force, and reductions in benefits, and  
21                  renegotiating Union contracts, and all the rest of the things that would  
22                  naturally flow out of a crisis as it deepened, we surely didn't need those  
23                  people to be misinformed.

1                   So I spoke to one of the responsible staff members thinking  
2                   that maybe I wasn't reading the Intranet entry correctly, and that maybe  
3                   there was something technical about it that just didn't reach where I was.  
4                   What I learned was that that staff member had simply been instructed that  
5                   that number was going to stay where it was for political reasons. That  
6                   struck me as an odd - - a very odd reason for misinforming our  
7                   employees.

8                   In fact, I think I mentioned to that employee that if the  
9                   employee wanted to have a long and successful and happy career in this  
10                  institution, it would be well to leave the political decisions and the political  
11                  reasoning to the politicians, and deal strictly with the facts and the  
12                  information that needs to come forward, so that they can then do whatever  
13                  it is that they do, as tortured as it may be from time to time, as political  
14                  people.

15                  Now, we come forward to a week ago. A week ago, one of  
16                  our key people, in looking at the sources of revenue, we have - - I may  
17                  miss this a little bit - - but, basically, we have a consolidated tax revenue.  
18                  We're all watching that. We - - for four years we fought at the legislature  
19                  to have restored to us the consolidated tax. During that battle, we lost  
20                  \$25 million or more. So all of us are very much aware of the consolidated  
21                  tax.

22                  We have property taxes. One of things that had occurred to  
23                  some of us early on was that in this day of a multitude of foreclosures, that  
24                  people were not just going to pay their property taxes to keep square with

1 the government if they were losing their houses. So there may well be a  
2 timing issue as to the realization of revenues from property tax.

3 And the third group of taxes, or other revenues we call them,  
4 they include franchise fees and other fees. And quite honestly, franchise  
5 fees is another one of the sources of revenues which had received a lot of  
6 attention from us. Not because we were watching how much was coming  
7 in day to day, but there has been - - and I think everyone that watches the  
8 legislature can acknowledge this - - there has been an attempt, on at least  
9 one occasion, and there has been a promise to do it on more than one  
10 occasion, to somehow take a portion of our franchise fees from us. So it's  
11 not like the franchise fee issue and the other revenues would be  
12 something we wouldn't normally watch.

13 But what happened to us is we had not kept track of, as we  
14 should have, the other revenues. What has happened is that we are down  
15 in the current fiscal year over \$7 million - - nearly \$7.5 million - - and we  
16 have two and a half months left in this fiscal year to make up \$7.5 million,  
17 when we have already hit our reserves about as hard as prudently we can.  
18 We have already done early retirement programs that have removed quite  
19 a number of employees. We have - - any backfilling we're doing, we're  
20 doing with people who are not as tenured so their salaries and their wages  
21 are less. There is a savings to us for that backfill.

22 And now, when we have pretty much played our hand, we  
23 find that there is nearly \$7.5 million we had no clue about. That comes  
24 because of our inattention to an important revenue stream that, in all

1           likelihood, could have helped us at least predict something better than a  
2           \$7.5 million gap.

3                         So when you think about all that we face right now, the  
4           shortfall that we're experiencing, the importance of maintaining our  
5           economic standing and our fiscal responsibility in the judgment of the  
6           rating agencies, a whole lot is on the line. I mean, the very existence of  
7           any institution that is challenged in this degree financially is always going  
8           to be on the line. Fortunately, we have talented people who, over the  
9           years, have done a good job of helping us reserve. And fortunately, even  
10          though we were way behind the other jurisdictions, we got after this and  
11          over time we've been able to figure out how to structure something that  
12          will get us through it.

13                        I feel that there has been a failure of leadership on the  
14          question of the fiscal accountability. What we know yet has to happen is  
15          something that's going to impact everyone, and we don't have any options  
16          now. There was a time when we had the option of figuring out, well, what  
17          do we do about deferred compensation and the match, and when might  
18          we take action on it, and how quickly do we need to start realizing the  
19          savings? We don't have that option any longer.

20                        Now some would say that's not a bad thing. But the point is  
21          it's a very disruptive because it has been a part of the compensation  
22          package for a lot of people over time.

23                        So, it is my view that we have been - - as much as we've  
24          been scurrying around trying to catch up, and I think we have done a lot to  
25          do that. In a sense, what we've been trying to do is catch up from some

1 things we caused ourselves. They were brought on us by our own  
2 inattention and probably a little bit of this stifling of conversation that very  
3 likely would have led to a discovery of some of these things at an earlier  
4 time if we had been on our toes and if we had an been in an attitude of  
5 really trying to find and have an open discussion across the City of the  
6 things that were plaguing us.

7 Now, I don't - - I don't pretend to know exactly how you meet  
8 these definitions, but I'm reading in the contract. I know that there are  
9 other things that really need to come out, because this is the time when  
10 the record needs to reflect whatever it is that we're concerned about in the  
11 way of the conduct of the Manager.

12 I invite you all now to make sure that whatever there is that  
13 leads to you this conclusion, from your own work or from work that has  
14 been reported to you by employees of the City, if you'd please indicate  
15 that for the record.

16 COUNCILMEMBER CLARK: Mayor, if I may. I really feel  
17 like we're - - I feel like we're ganging up on an employee who was a very  
18 loyal employee and worked very hard for the majority of their 14 years  
19 here. I have to remind myself that it was Mr. Kirshman who has driven  
20 this process and brought us to the place that we're at. And, in fact, with a  
21 \$1.2 million settlement offer, really - - really gave us no other options than  
22 where we are. And I feel terrible about that because I really have felt, up  
23 until very recently, that we had a very good employee that had been  
24 placed in the wrong job, through no fault of anyone's. It was just the job  
25 was just too much. I really hoped that there would be another resolution.

1                   With that said, I think there is one more thing that has  
2                   disturbed me for several months now. That we had - - Ms. Peck revealed  
3                   confidential medical information on more than one employee to this  
4                   Council and to others on staff. And it has disturbed me almost as much as  
5                   the budget deficit. We operate in an environment of trust with our  
6                   employees. We operate in a way, I think, where employees feel  
7                   comfortable with us. And for a City Manager to either not be aware of  
8                   some of the laws regarding medical privacy, or to ignore it for whatever  
9                   reason, I find extremely disturbing.

10                   I wanted to say that before I be quiet because it just has  
11                   gnawed at me since it occurred. I know it occurred with me. I know it  
12                   occurred with other staff members. And I'm reasonably assured that it  
13                   occurred with other Councilmembers. And that conduct, in and of itself, is  
14                   just beyond my comprehension in the environment that I've worked in for  
15                   16 years. I've never had an incident where that kind of information was  
16                   revealed without permission of the employee.

17                   COUNCILMEMBER KIRK: That same medical information I  
18                   think it was shared - - we were in the same meeting, I think. I remember  
19                   when they left I scratched my head and said something to Jack. I didn't  
20                   know they could do that. Having been - - spent some time in the records  
21                   business, especially medical records, I know that there is a lot of HIPAA  
22                   requirements and privacy issues that have to be abided by. I was  
23                   dumbfounded that now we were starting to talk about the medical issues  
24                   of our employees, as to why they weren't fit to do their job. That was

1 shocking, absolutely shocking to me that we would do that. We, as City  
2 Manager.

3 I don't know if anybody else wants to talk about that. But I  
4 have another issue I want to talk about, but if anybody else wants to talk  
5 about the medical issue, I'll push on to Development Services.

6 MAYOR GIBSON: Why don't you go right on ahead?

7 COUNCILMEMBER KIRK: The DSC, the Development  
8 Services Center, is something that has been of particular concern to me  
9 because it's an enterprise fund; it's something that really needs to stand  
10 on its own. And when we first set the DSC up, that was the understanding  
11 that this was going to be a development - - this was going to be an  
12 enterprise fund and that it was going to be self-sustaining.

13 Probably a year ago when we realized that - - maybe a little  
14 more even - - we knew that the economy was starting to slow down. I  
15 asked for multiple meetings about the DSC, because I think - - I knew  
16 instinctively that that would be the first place where we'd be able to see a  
17 real drop off, because we knew development had slowed we knew that  
18 our revenues were going to drop.

19 I asked and asked and asked Mary Kay about, hey, tell me  
20 about the DSC, and every time it was, oh, don't worry, don't worry. We're  
21 working on it. We're working on it. Well, another month would go by.  
22 We're working on it. Another month would go by. We're working on it.

23 Finally, I had a meeting, probably six months ago, after  
24 asking for three or four months about the DSC, specifically about the DSC,  
25 and what steps were we going to take to address this downturn, especially

1 in that department, which I thought it would be so evident that we were not  
2 doing well.

3 Now I don't know if this is the private business side of me  
4 coming out. But I can tell you right now that the private business would  
5 not have waited for four or five months to take any specific action. Private  
6 business would have reviewed that and taken action in a real fast hurry.  
7 And yet we went on. Another month would go by, another meeting or two.  
8 Another month would go by, a couple more meetings and more status and  
9 more data and more financial information. We needed to get more  
10 information.

11 And then, as part of my meeting - - I had two industry  
12 representatives were in my meeting and one of them was building a major  
13 project in the City. His comment to me was this. He said, when I first  
14 started my project I had two inspectors, now I have double-digit inspectors  
15 on my project. So that indicated to me what was happening. I knew that  
16 there was - - there wasn't a lot of management going on. It was let's wait  
17 for more data and, hopefully, things are going to get better and we're  
18 going to get to the bottom of this recession, this downturn, and then it's  
19 going to correct itself. And there was no management happening. I never  
20 saw it.

21 It wasn't until, I think, we all kept seeing those numbers  
22 going down and down and down that finally there was some action that  
23 was taken. So I always felt like there were a lot of meetings going on, but  
24 not a lot of doing going on and not a lot of action being taken. Just a lot of  
25 talking. If we're going to run this City more like a business, we can't do