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>> Councilmember Nguyen: I'd like to call the Public Safety, finance and strategic support committee to order. We will start with a review of the work plan. We have many items that are being requested for deferral to December. So if I can get a motion to defer all those items.

>> Motion to defer all those items.

>> Councilmember Constant: Second, hoping we can do all those items.

>> Councilmember Nguyen: We have a motion to defer 1 through 10. Ing and the are consent calendar.

>> Item 5 was availability in hard copy and made available to the public. However it was inadvertently not posted to the Website. So it's at the discretion of the committee to hear it today.

>> Councilmember Nguyen: It's available but not posted on the Website.

>> Before this meeting we were working on getting it posted. I can double-check.

>> Councilmember Constant: When's it coming to council, or will it?

>> The committee report went to council on December 8th. It's on, we have confirmation it's on.

>> Councilmember Constant: That's more than ten days from now. I'll make a motion and second --

>> Councilmember Oliverio: Second.

>> Councilmember Constant: To waive the sunshine, whatever you're asking for yes.

>> And just one other comment before we get into the remaining agenda. Item D 4 was approved by the Rules Committee at its special meeting and at that Rules Committee meeting I did ask for the item to get a sunshine waiver to be distributed separately.

>> Councilmember Constant: I'll make a motion to approve the consent calendar.

>> Councilmember Nguyen: All right, we have a motion and second to hear all the consent items with a sunshine waiver. All those in favor, opposed, hearing none, motion carries. We will now move down to item D, reports to committee. D 1. Peer review of the City Auditor's office and introduction of the audit teams.

>> Sharon Erickson: Very briefly, Sharon Erickson, City Auditor. The city charter requires a performance audit of the auditor's office every two years. The last review was performed in November of 2007. I have with me the peer review team from the Association of Local Government Auditors that is on site this week doing their review, and I would just ask them to come down and introduce themselves.

>> Good evening -- good afternoon -- it's evening for me. I'm from the East Coast. I'm Tina Adams, I'm from the city of Charlotte's internal auditor department. I'm a senior internal auditor. I would like to introduce Wendy Gamble from the Los Angeles police department and Damica Rogers from the City of Long Beach. We'll be finalizing our review today and issuing a report to Sharon giving our results.

>> Sharon Erickson: We'll be back to you next month with that report.

>> Councilmember Nguyen: Welcome, and thank you very much for joining us.

>> Thank you very much.

>> Councilmember Nguyen: Up next, we have the verbal quarterly status report on the Consortium for Police Leadership in Equity.

>> We have Dr. Phil Gough.

>> Councilmember Nguyen: Anywhere you like, Dr. Gough.

>> Thank you for having us. And for moving us up early. I appreciate that. This is the second quarterly report since city council approved the arrangement with the Consortium for Police Leadership in Equity. And I'm happy to say that this is the first report since the ratification of the memorandum of understanding. Before I get into the sort of formal review process of the report I should say that the written report is over there on that desk as well as the introduction of Kimberly Barsamian Khan who is the research site coordinator. I encourage everyone else to take a look at that. All I'm going to do is to essentially review the document, the notes in there provide a bit of context for that and to be available to answer questions, if that pleases the council.

>> Councilmember Nguyen: That's fine.

>> All right, so since our last update of three months ago, we have in fact signed and ratified the memorandum of understanding. The memorandum of understanding between the City of San José and the University of California Regents essentially outlines the scope of research and the responsibilities of the San Jose Police Department for the successful completion of our research. Scope of research includes the following goals. First, CPLE will assess the City of San José Police Department's current police departmental statistical reports and data archiving practices. This arose around the concern with regards to how reports were relayed to the community, whether or not data is being collected in an optimal format to keep track of things like equity in stops, use of force, so forth and so on. Second, the CPLE will conduct a research project designed to gauge the role of race in suspect stops and arrests. We've done a preliminary analysis of aggregate data that we believe might be steps forward toward doing a more informative update to both council, community members and SJPD, and we have received funding as I'll talk about momentarily to carry out our more in-depth analysis. Third, the CPLE plans to conduct similar analyses on use of force and victims of crimes among major demographic groups. That's that further in-depth analyses that we spoke about. Each of these is separate research projects. And again, use of force is in that item. In addition, we have been doing ongoing interviews, well with community members and community leaders. Hopefully I'm going to get a chance to talk to you about that, answer questions about that. We're looking fourth at issues that exacerbate use of force in citizen and police stops. And again that's part of the MOU. And then within that there's always the opportunity to amend the MOU to add and/or to delete items from the initial priorities. Okay? So that MOU was signed shortly after the last update. Part 2, since the city thought it wise to hold open forums with communities, and it was obviously ideal for members of the consortium to be available for that both to listen and hopefully to be able to respond to community members I wasn't going to be available for all of that so what we did was we chose a research site coordinator. The introduction and the background information on Kimberly Barsamian Khan is available on that table. This is Kimberly. She was here for the last open forum. She will be here again for the April forum and will in short order be delivering some of these quarterly updates. She is about as accomplished a researcher for someone of her stage that we could hope for, and we are very lucky to have her as part of the research team. Point 3, a relative short point, we have recently received infrastructural funding and funding for research which will be majority research here in San José from the Russell Sage Foundation in excess of \$340,000 for the next two years. We're hoping that that will get us the short-term research done that we had outlined in the memorandum of understanding and get us enough pilot data for the medium and long term goals so that we're in good standing to move ahead with that with continued federal funding. Now to the meat of the update. Items 4, 5 and 6 are in order, San José policing data and record keeping, preliminary data analysis and community concerns, okay? Item 7 will be the recommendations preliminarily based on these initial findings. Item 4, San José policing data and record keeping, okay? I'm just going to read the first paragraph of this and then move forward and give some context. As previously indicated shortly after the MOU was signed the San José police department sent the CPLE a significant amount of requested data. CPLE researchers received ten years of data from San José indicating the number of arrests suspects and victims related to all felony and misdemeanor crimes further broken down by different racial groups, that meaning mostly black, white, Asian and Hispanic. In addition the San José police department sent similar data from ten comparable cities. These cities were selected on the basis of location, population demographics, police services administered, and crime rate. The CPLE requested in data in order to compare racial disparities in arrest rates across similarly situated cities. After reviewing the initial data sent by the San José Police Department the CPLE subsequently requested additional data from the comparable cities. Okay, so what we're looking for is doing 20 years of analysis in San José, as well as the 10 comparable cities. What that's going to give us is over time are

we seeing increases in the disproportionality of arrests, particularly of Hispanics, because that's the issue here in San José. And are we seeing similar rates if disproportionality across similarly situated cities? Okay? There is yet -- this is in part to take a look at this issue of whether or not during discretionary arrest categories, I'm putting that in quotes because there is debate within the law enforcement community over whether or not anything is a discretionary category, but community members during our interviews have expressed concern that particular arrest categories, drunk in public, resisting arrest, disorderly conduct, are discretionary on the part of officers. So we're looking at these discretionary categories and whether or not there is higher rates of arrests for particularly Hispanics than in the quote-unquote nondiscretionary categories, such as forcible rape, assault and battery, misdemeanor battery, things like this. Okay? The first thing is we need more data, 20 years in San José, 20 years in the 10 comparable cities. Councilwoman Nguyen, I'm happy to interrupt the report to answer questions if you --

>> Councilmember Nguyen: No, go ahead.

>> Okay. So that's the first. But we have some data, we're doing preliminary analysis on those data, we're requesting additional data. There is a second data request that we have made, with regards to what is commonly referred to in law enforcement as type one versus type 2 data. Type 1 data is type 1 arrest or type 1 incident is an incident that is in response to a call for service, okay? So I as a citizen have a concern, there's too much noise, I see someone having a fight, I call the police, okay? That for most of the people we've done interviews with is a nondiscretionary stop because a citizen called and said please come and attend to this. Type 2 is officer self initiated. Okay? That's kept in what's referred to as the CAD system but kept separate for the aggregate data of incidents. When we're getting information and when San José police department is giving out information generally, they're not giving out information on whether the stop or arrest resulted from a call for service or officer self-initiation. Okay, are you guys with me on that? Okay, that's not uncommon. It's not bad policing practice, it's not bad data archiving practice. It's the case for every major city police department in the country that we have dealt with. There is a reason. If you keep track of whether or not these arrests and these stops are happening as a result of call for service as opposed to self initiation, right? The rationale for that is we want to check up on whether your self-initiation, you patrol officer, is biased, right? The concern is if you start keeping track of that, you're going to end up make officers depolice, or simply not engage with citizens. That -- it demoralizes patrol officers, and it can end up compromising public trust and public safety. At the same time, if we don't have that information we don't know how valuable it is. What we have done is requested from the San José police department the opportunity to merge type one and type two data with the type of data we got to see whether or not there are larger rates of disproportionate arrests and stops in officer self initiated as opposed to calls for service, okay? That doesn't tell us whether or not there is rampant racism, it does tell us whether or not that merging of data might be something that is useful for doing early interventions, tracking whether or not the police are using their training to the best of their ability. If we see disparate rates of disproportionality, then that's definitely cause for further investigation. If we don't, it also doesn't mean there's not racial bias going on there. But we've requested the information. It will be the first time that independent researchers have had the opportunity to look at different rates of disproportional stops, okay? So let me take a quick break and make sure that we're all on the same page for that. Okay. So those are the additional data requests that we've done so far. Now let me get into the preliminary data analyses. Upon receiving the ten years of data from San José and the one year of data which was for 2007 for the other ten police departments, what we then did was we went back to our community interviews, right, and we said what are the problem arrests accounts for you? What are the arrest categories where you're concerned that officers are racially targeting citizens? Okay we came up with eight so-called discretionary arrest categories. Let me be sure that I've got them. They are drunk in public, joy riding, disorderly conduct, disturbing the peace, vandalism, marijuana possession, glue sniffing, and the other drugs charge.

Those were considered discretionary or problem arrest categories from the nonrepresentative, nonscientific sample that we were able to speak to. But that's eight categories representing about a third of the total misdemeanor arrests in San José during that time period. We then chose eight nondiscretionary categories, that were about comparable in the number of arrests we're talking about. Okay? So a comparable group. Those nondiscretionary categories include assault and battery, driving under the influence, petty theft, lewd conduct, indecent exposure, malicious mischief, trespassing and illegal gambling. Okay, that is another third of the misdemeanor arrests during the ten-year period. So essentially we are looking at two categories that constitute two-thirds of the misdemeanor arrests. It's a fairly sizable amount and a good number of arrests to look at. All we were looking at during those that ten year period are there higher arrests of Hispanic and African American community contacts we've had, we've had now over 30 interviews they said we expected to see that. We expect to see higher rates of racial disproportionality in the discretionary categories than in the nondiscretionary

categories. That is not what we found. Hispanics are arrested at the rate of 53.98% for the discretionary crimes and 53.87% for the eight nondiscretionary crimes. Right? It's not only not statistically significant, you can barely see it. We were then -- took a look at the eight quote unquote discretionary crimes, against all of the rest of the crimes in the misdemeanor category. So maybe the fact that we chose a comparable group was skewing our data. We took a look at all of them, so that's now 100% of the crimes, the 8 against the rest. Those rates were for the nondiscretionary crimes which include things like you know forcible rate, 54.21% as compared to 53.98% for the discretionary arrests. When the rate of Latinos demographically has increased sizeably, we do not actually remained constant. So over ten years we don't see an increase and we also don't see a spike in the last two to four years which was another theme that came out of our community interviews. They were concerned that in the last several years it had become worse. We don't see that statistically. Even though you would expect to see an uptick given what's going on demographically in San José. Lastly, for those of you that are statistical nerds like us, if you are worried about the distribution of those eight so-called discretionary categories, the top five discretionary categories -- let me make sure I find them and read them out in order. So these are the ones where Hispanics are being arrested in the largest rate are, in order, disturbing the peace, vandalism, D.U.I., hit and run, and failure to appear for a nontraffic violation, okay? There's actually a misprint in here. One of those is a discretionary arrest category and I apologize, I'm looking here, that should not be the case. Conversely the categories with the lowest percentage of Hispanic arrests, obscenity charges, illegal gambling, misdemeanor manslaughter, child support violation and prostitution, none of those are discretionary or so-called discretionary arrest categories. So when you take a look at this essentially what we're talking about is the arrest categories that are of concern for the citizens that we've talked to are not the ones with the highest amount of disproportionate arrests. Okay? And none of these have increased with any real pattern, if we do a time series analysis over the last ten years. We're also looking for 20 years of data that's what we requested so we have a better sense of the time series, okay? That will also tell us since the last ten years are not as dramatic an increase of Latino population as the last 20 years, that will give us a better sense of how the arrest rates are looking compared the demographics. But so far there is not strong evidence of the disproportionality that is being reported, either in media or among the community samples is backed up by this preliminary data analysis, okay? Important scientific caveats to put on this. That means it is not showing up on the aggregate level. It does not mean that any particular incident is not motivated by racial bias, okay. We have not ruled out the possibility that there are bad apples or a culture of bias that influences any particular stop. What this does is it points against the direction that racial bias is going to be shown in one set of arrest categories as opposed to another set of arrest categories. We have not pin pointed what constitutes problem arrest categories for the community. We have chosen this based on preliminary interviews and preliminary analyses okay, based on what we know these statutes work in other cities. What we'll need to do to look at discretionary versus nondiscretionary, or better problem categories versus nonproblem categories is a more scientific review and survey of the community, and a dialogue between community and law enforcement to, a priori, decide these are the categories we want to keep track of. However in going back to our community samples and talking to them when we say this is the kind of data we're seeing, the response was that's news to us. There must be other problems. FTC response was not well your data's wrong or we don't believe that, we said okay, well then it must be there are bad apples and we see a lot of them and the bad apples are doing bad things. That led us to believe again this is in an anecdotal sense that this might be a better strategy for reporting on disproportionality. So it must be noted that all these are out of 50%. And we've said before disparity which we're seeing across the board in all of these categories is a problem. Disparity is something you want to reduce, but we are not seeing greater disparity in the so-called problem categories than we are in the nobody nonproblem categories. So reporting on crime in this way might lead to a more informed debate about where disproportionality and racially dispar at arrests, what the consequences are and how best to keep track of them. I'll get to that as we move to the recommendations. That's our preliminary analysis so far. I apologize for that type owe. We'll have that issued in an amended report that we'll issue in a day or so. Area six, community concerns. As I said, we have completed over than 30 intrfs at this point. We have been very heartened in -- if I'm remembering our data correctly in approximately 50% of our interviews and more than that for our interviews for Hispanic and African Americans. The interviews begin with their misgivings about the consortium. The interviews last for a sizable period of time, and at the end they have, every one of them, communicated their heartenedness by the tone and the tenor of the interview. I am heartened by the openness of the people who have courageously decide to partake of the process as well as the specifics of what they've told us. As you'll see there are serious concerns that are emerging as significant themes. I will reiterate this, I think I said this at the beginning when we talked about our methodology. We have what's called the rule of three when we do our interviews. That is we are not able to report themes right in the interviews unless three individuals or more spontaneously speak the theme and in ways such that it cannot be traced back to that individual. That's because we don't spontaneously report on any

individual that has agreed to speak with us. If they choose to do so, they may. But there are in many cities concerns about speaking honestly about criticisms you have about law enforcement. This is the way that we protect citizens from those concerns. So these three themes that we've identified in our preliminary analyses and I'll expand on those are themes that have come out time and time again. When I say majority, that means over 50%. When I say a significant minority, that means 25% or more. So there are three themes that have come out repeatedly that are of note and of concern. First, there were a significant concern among black and Hispanic community members that the San José police department is a haven for racially biased police. Let me be clear what I mean by that. It is not that it is rife with them, it is not that it is overrun with them. There is a sense that there is a small minority of officers that do bad things, that are racially biased and act on those biases. Their concern is it's a haven for that small minority. That those folks can do what they need to -- what they are doing that's racially biased and that they won't be caught or punished, this again is a community concern, actually a majority of black and Hispanic respondents that we spoke to. That major is subsequently frustrated by the attempts to discipline those very few bad apples and that is the sort of number one concern with regard to our particular scope of work. Second, a significant minority meaning over 25% of community members and you'll note this is not of a particular racial group, spontaneously indicated the need for more communication with chief Davis. They expressed that Chief Davis was nearly hearing their concerns or hearing their concerns as legitimate. Of the non-black or non-Hispanic folks that we spoke to, 100% said we are not concerned that there is racial bias as there is overly aggressive policing. So the concern was that there was a heavy hand or oppressive policing are the types of phrases that are coming up, that there's unnecessarily harsh response to relatively small crimes, okay? That it's not race, but it's communication and accountability in terms of communication with citizens that is the issue. So of the non-black and nonhispanic respondents that we spoke to, many of them have said that a good portion of this has become, many of them, we have minority 25%, has become sensationalized, they talk about not wanting to grandstand. So these are the words that come out. But that there's serious concern about overly aggressive policing and a lack of communication and accountability with the chief. Third, a majority of Hispanic community members also indicated their concern that the individual speaking out against the San José police department and chief Davis did not always represent community views and this was echoed by patrol officers. It may not be surprising that it is echoed by patrol officers for those who are cynical, but that a majority of our Hispanic respondents said this might be surprising, okay. So when we get to recommendations, it's important both to think about what the concerns are with regards to the San José police department and what has come to be a high visibility media story in San José is being received by a community that at least has chosen to speak to us. Now section 7 en. The preliminary recommendations based on some surveys and empirical analysis and also based on anecdote. And before I deliver the three preliminary recommendations, let me say this: There's a difference between statistics and science on the one hand, and politics on the other hand. It's obvious that this is a politically charged topic. It has become even more so since the time that CPLE came in to work with San José. I do not want under any circumstances to have science substituted for politics or vice versa. So when I'm making some recommendations I want to make clear there are some recommendation based on preliminary analyses of data and there are some recommendations that I hope can be drawn as common sense from the things that will inform the subsequent analyses. So when a majority of individuals say we want more communication, I'm going to recommend that that be responded to because my scope of research is doing research in the service of public trust. Right? That's not a scientific recommendation but I'm hoping that will be uncontroversial. So again, difference between science and politics I'd like to keep them as separate as possible because that's the only way we can be useful to you. So we have three recommendations. The first, change racial arrest data reporting structure. This is what I spoke about in terms of defining what we mean by problem or quote unquote discretionary arrests versus nonprobable arrests. I don't think there's as much community up in arms, we haven't done the survey but again common sense, people aren't going to be as up in arms that there's racial profiling going on if it's the forcible rapes that are 70% Hispanics, if it's the assault and batteries that are 62% Hispanic, okay? Those are not made up numbers, those are numbers that you're seeing in a particular year over the last ten years, all right? So comparing the problem categories, the categories where citizens are concerned versus the nonproblem categories gives you a more informed sense of away is the role of officer discretion as perceived by the community in terms of racial disproportionality in the arrest. It is not difficult to do that. It didn't take any particularly difficult models and if there were, by the way, I will say the crime analysis unit of San José is one of the best if not the best in the country so they could do the complex regression analyses, but it's not hard, right, and reporting it in that way might lead to a more informed discussion. But picking the categories is going to be the key issue. And can you do that scientifically by surveying and you can also do that by politics by arranging a conversation between law enforcement and concerned community groups. In advance of the scientific answer which may take a long time to figure out where there's actual discretion involved I would recommend that

community groups and law enforcement get together and decide what the problem categories are between the two of them, keep track of those and keep them separate from the nobody problem categories. So what do I mean? There have been community concerns about public intoxication, community concerns about disorderly conduct, community concerns about resisting arrest. There are other community concerns. It may be the case that once they have spoken to law enforcement about what the statutes are, those cease to be community concerns. It may be there are other community concerns around other arrest categories after they spoke to law enforcement. But a conversation about what the protocol is, what happens the ones we are less concerned about like on manslaughter and forcible rape if that can help to lead to a more informed data reporting structure. So I was asked specifically about the annual reports on these things, on racial profiling, on racial statistics on stops and arrests. That would be the first recommendation I would have. If you're going to report on it on any function you should do it across a couple of arrest categories and segment out the ones the community is concerned with, the ones they are not and the ones the community are concerned with should be chosen collaboratively between the community and law enforcement. Are you all with me? Great. Number two, I would suggest that we investigate type 1 versus type 2 data merging. This hasn't been done in any city, again, not from an independent researcher, so we don't know what the probative value is to use sort of a legalistic term. I am convinced that it can be a useful tool in cities where there might be problems. Having studied what I've studied in other cities like in Denver and in Houston and in Toronto. Given that, what we've asked for again we've made the formal request to take a look and see what merging would do and then allow me to and the CPLE to brief this body and the city generally on what we find. That might be a national model for an early warning system or it might tell us nothing. Recommendation C or 3 open a dialogue or community police executive communication. This is the one that is not backed by anything other than the conversations that we've had, the interviews that we've had but the interviews have been so electronic and overwhelming along this them that I find it to be an uncontroversial recommendation to make. Community members are almost many uniformly being asked to participate with the way the decisions get made and both understand and hold accountable their police department for those conversations. I heard repeatedly in my interviews and I know that Kim has heard in her interviews and the interviews we've done together that people are concerned that there are symptoms in the executive staff, but we've also heard repeatedly that people don't want to throw the baby out with the bath water. That is a communication and accountability problem and if that really is the case then it seems that dialogue on mechanisms to ensure regular communication and community accountability of law enforcement is a logical next step. Now I should say we wrote up this report in advance of the news of the last couple of days. So it may be intriguing of note that the independent research body has come to similar conclusions as some of the governmental bodies, I don't think that's necessarily a bad sign. With that I certainly want to open up to questions, comments, concerns and discussion items and thank you for taking the time to make the presentation.

>> Councilmember Nguyen: Thank you Dr. Gough and thank you so far for all the work that you have done. I want to take committee questions and concerns before I raise concerns myself. Are there any questions or concerns from committee members?

>> Councilmember Constant: I have a question in the area of the outreach. I know you mentioned here the different groups that you have met with and will be meeting with. Have you also taken into account the geographic representation throughout the city, so the groups are representative of all districts?

>> That's something that we're hoping to be able to account for yes.

>> Councilmember Constant: I just make a comment that as you do that, if you -- the police department is broken up into four divisions. But those four divisions aren't necessarily representative of the different spaces in our city. I ask you as you do that to look into that and try to look at them from a more similar neighborhood characteristics or how those areas are made up.

>> The difficulty with some of the sort of snowball methodology which is we do an interview and we ask for additional people to talk to is that when we get new people to talk to we frequently won't get where they live or where they work and asking people to disclose that can be somewhat unnerving. So when we have the opportunity to do that that's where we're absolutely not only trying to get down to census tract data so we have that kind of data over time, we're trying to get councilperson district as well as one of the four regions in terms of police this person we've got, not for where they live but where where they work and where they spend the most amount of their free time.

>> Councilmember Constant: My concern is we at least do outreach for participants so we make sure all areas are represented.

>> Councilmember Oliverio: Hi, Dr. Gough, I just wanted to say thank you for your summary of the preliminary findings and as we go along there will be more to come so thank you.

>> Councilmember Nguyen: Dr. Gough I know that this is a verbal report but in the future is it possible for us to get a written copy prior to the meeting? I just find it very difficult sitting here trying to read through this and listening to your presentation at the same time. It's a great presentation but I like to have at least 24 hours to read the written report and then we can have probably a more productive discussion.

>> Absolutely.

>> Councilmember Nguyen: Okay, thank you. I guess just trying to segue into my questions about sort of the compositions of the people that you interview. Can you talk a little bit about what's the ratio like, how many community members did you interview, how many police officers? Whether these community members come from advocate organizations, social organizations, legal organizations or just community members that come from neighborhood organizations? That gives me a sense of what types of responses they would give you in regards to the questions that you can ask.

>> Again, this is a nonrepresentative sample. We are using snowball methodology this time. We are asking for councilmembers to offer names, the Sunshine Reform Task Force, as well as the public intoxication task force, the police auditor giving independent names where we get to a critical mass where we're not likely to be revealing who spoke to us by revealing demographics it will be significantly easier. We are not there yet. We have oversampled Hispanics, that's okay we are not lock them up, they don't mind. We have oversampled African Americans and we have oversampled community activists, the activists that tend to not side with police so community activists that are critical of police.

>> Councilmember Nguyen: The names you receive come from city administration not names you came up with yourself sort of surveying San José?

>> No, so I can provide you with the names of the public bodies that have participated on public records. I can't provide you with names of other people we've asked for questions from.

>> Councilmember Nguyen: That's fine.

>> It is not the case that this is the only sources of information.

>> Councilmember Nguyen: What about rank and file, are these field officers or executive management level?

>> Executive service level, we telling us what's going on in the street they're not there so when I'm talking about interviews we're talking about patrol and first line supervisor sergeants.

>> Councilmember Nguyen: And I assume you didn't in light of the recent incidents involving Vietnamese members, members of the Vietnamese American communities, you didn't interview members from the Vietnamese American community?

>> I can say that members from the Asian American community were on our list, contacted us spontaneously and we're in the process of setting up those meetings.

>> Councilmember Nguyen: And are you coming back to this committee on a quarterly basis?

>> I'm sorry?

>> Councilmember Nguyen: Are you returning to this committee on a quarterly basis?

>> Yes, that's correct and there will be someone here representing CPLE's team in person to give quarterly updates. In addition, we now have it worked out so Ms. Khan can be here for the open forums.

>> Councilmember Nguyen: Thank you very much. Is there anyone in the audience wishing to speak on there item? Did you fill out a card, Raj? You can just come up and speak and then submit a card when you're done.

>> I just had I guess a follow-up question maybe you could take back to your study. I know you looked at discretionary versus nondiscretionary arrests to I guess see if there was any difference between the two and if you could see any patterns. I think what might be helpful to for the larger fir is to follow the arrests that actually get followed to the district attorneys and get prosecuted because the first stage that people had concerns with. That might be something that is revealing what happens after the arrest in terms of the valuativity of the arrested. Yeah.

>> Councilmember Nguyen: Thank you. Anyone else? Councilmember Constant.

>> Councilmember Constant: I just have a couple of questions. Following up on what Madison asked, on the officers that you interviewed, how did you go about, was it from different groups of officers, say officers with five years or less, in this seniority band, or were they selected by their individual race, to get representation or how did you go about selecting those officers?

>> We have -- we've asked for names of officers from both from executives and from patrol officers, who we've come into contact during our times doing site visits and we asked a similar question as we asked the community members, who hates you? That is always our first question. So who's an officer who doesn't like the San José police department? That's where we start. And we ask for and who has credibility as the second follow-up question, e complainers so that's where we started and that ranges across age race and seniority. We are interested again in patrolling sergeants.

>> Councilmember Constant: On the selection of the community members you mentioned making specific requests to councilmembers and Pierluigi and I just had a little side bar here. I remember discussing process with you. I don't remember being asked to give names of specific people or groups. I'm just wondering if it is something I missed. I know I had a discussion about the overall project --

>> So each member council should have received an e-mail requesting names of individuals. And I know that -- I don't want to speak out ever turn, but I know I received an e-mail back from Councilmember Nguyen and from Councilmember Kalra.

>> Councilmember Constant: I can honestly say I don't recall ever seeing that e-mail and just the fact that only two out of 11 of us responded raises concerns. I don't know if you want to add if you saw that e-mail but I don't remember participating in that.

>> Fair enough. Well regardless of whether or not the e-mail was sent or received it's certainly easy for us to follow up.

>> Councilmember Oliverio: And just going along with Councilmember Constant if you would like people that the council office would suggest, myself, we're happy to do that. Just you know make it to guide me, ask me, you know, try to be specific on you know what are you looking for or looking for and I'll have to find someone that never even discussed the some mode of neutrality or something like that but I'm happy to do that.

>> Councilmember Nguyen: Anyone else? Okay. Well again thank you very much. This is a great first report and I look forward to hearing upcoming reports in the future. Can I get a motion to accept the report?

>> Councilmember Constant: So move.

>> Councilmember Oliverio: Second.

>> Councilmember Nguyen: We have a motion and second to accept the report. All those in favor, opposed, hearing none, motion carries. Thank you Dr. Gough.

>> Ross Signorino: Are you here to take public comment?

>> Councilmember Nguyen: I asked for that already. Come on up, Ross.

>> Ross Signorino: Thank you, Madam Chair.

>> Councilmember Nguyen: You're welcome.

>> Ross Signorino: My name is Ross Signorino and I read about this, this meeting coming off this morning in the newspapers, so I thought I'd be here regardless of how I'm dressed I was making soil this morning. In other words, compost. But nonetheless I thought you'd want some gardening report there. Nonetheless it was gratifying about hearing about discretionary, nondiscretionary arrests so on. One thing that struck me what he said, was that in a minority group, there's always a minority, within that group that are going to complain the most and feel that they were unfairly treated. I hope I'm paraphrasing what you said correctly. If I'm incorrect please correct me, okay? , I'm not easy to correct but nonetheless. But nonetheless, I thought that was interesting and I think that one of the other things too, that I really don't understand, he was speaking here at the same time of community dialogue. I really have to say, going to all the meetings and going to much of the outreach dialogue that goes on, I have to say the City of San José and the police department have been so cooperative in this regard, answering news things, and newspapers, radio, television, and so on. I hear many times the Chief of Police puts himself on the line on our local radio station KLIV for an hour, answering all calls that come in and hearing their complaints and stuff. And you know the last time he was up there, in this radio station, was the first, Monday of the month, of November, and people were calling in. Some things they felt that they wanted to make it known to him. But not one, not one person called in and criticized the police department for their brutality or overhandedness, their use of force, not one. Just some things that would speak --

>> Councilmember Nguyen: Ross, your time is up.

>> I'm going to sum up. I know you're being generous with the time. I think these things should be brought out. This is a good report and I really appreciate the fact that I'm here to listen to this. I think it's a fair one. But when they say the City of San José including the city council and the mayor, we've really been generous with dialoguing with the public no matter who they are. Thank you.

>> Councilmember Nguyen: Thank you. You can talk to Dr. Gough later on.

>> Would you like me to respond? I know he's hard to correct but --

>> Councilmember Nguyen: You can talk afterwards. All right. We're going to move down to item 3 and 4, we're going to hear 3 and 4 together. Item 3 is Public Safety finance and strategic support committee on October 14th meeting follow up on police reports and Item 4 is the review of all initiatives under way dealing with the use of force by the San José police department. I believe -- our city manager is here, and I believe she is starting off with the presentation.

>> City Manager Figone: Thank you, Madam Chair and members of the committee, good afternoon. Today my goal is twofold. First of all, to ensure that the committee and the public is aware of and updated on the various initiatives underway in our police department to address the use of force issue. And also, I'm very interested in any input that might be today towards additional efforts that may need to be put in place to comprehensively address this issue as we move forward. So the report before you outlines several police department internal initiatives to address use of force practices and procedures. Also as noted in the October 14th committee outcome report, the internal police department plan to review use of force is a starting point to ensure that appropriate management and oversight processes are in place internally to monitor the use of force. This does not mean that this is the only approach that will be put in place but given the recent events and high level of concern from the public, it is really very important that the police department management conduct and establish a process for to manage in order to manage that they need information in order to set expectations and hold their

workforce accountable. With that said, I do see the mayor's referral as timely, and consistent with the high level of community interest, and use of force, the added input from the independent police auditor and the City Auditor will help inform me of any additional efforts that I will need to put in place. And as I develop a work plan to address this referral, I will look for ways to link the ongoing efforts underway in the police department with this next review process. The next 45 days will give me the opportunity to work with my council appointee colleagues and to bring a verbal report for the committee that begins a more comprehensive approach. For this reason, staff's memo suggests that the priority work plan item from October 14th committee meeting be the use of force. And during this first 45-day period, I know that I certainly will gain process reviewing this report is not something that is automatically intuitive and does take some time and expertise to really understand what it is we're looking at. So with that I will turn it over assistant chief Katz.

>> First October 14th meeting that the committee held and I will turn it over to Captain Gary Kirby to address our use of force initiatives we have going on. Obviously on October 14th the committee held their meetings. We had up to at least 60 people in the chambers. And responses were made to the committee's questions. And we came up with three themes in response to those questions. The first theme was that the city's efforts at producing positive changes, in general the speakers in the audience felt that the policies and the changes of the city and the police department had made were bringing about positive results, for making changes in community relations and we're going down the right track. A second theme was that there needed to be an expansion of community policing services and several speakers pointed to community policing as ways to enhance relationship between the police and the community. And to enhance trust and contribute to public safety. And you know some several speakers voiced the opinion that the police department should be doing more to involve youth and involve more segments of our community in segments such as neighborhood watch and crime prevention and third thing was expanded engagement. And several speakers involved groups or organizations they felt were being uninvolved community with the police department and human rights association volunteered their abilities to help facilitate this effort. So now we move on to suggestions for the department's work plan. One was, the department should use consent forms to authorize searches. The administration has indicated we would like to explore areas that can be strengthened and improve operational and legal issues along with that. Currently we do have a consent form that's available in multiple languages. There are operational issues with that, sometimes that can interfere with the fluidity of an investigation, that is occurring on the street in the field and sometimes individuals choose not to sign that form. But it is something we're going to explore more deeply. The second that came up was in this investigating resisting arrest in the public intoxication arrest and that is occurring. That has been occurring. Some of the changes that have been made at the police department actually have occurred over a year now ago, where that all persons that are arrested and booked, those arrests require supervisory review. We're conducting scrutiny on those kinds -- every arrest, but especially with resisting arrest and disturbing the peace. We've included the same type of training and education to the department on those, as we did with drunk in public and also, for the about the last year now we've also been conducting on a monthly basis in field operations or patrol spot-audits on the report that are done by police officers to check them for quality, for sign-off and to make sure they meet the requirements that the all probable cause elements of the crime are in there, they've been properly documented, the supervisor has reviewed it and the supervisor's review was adequate as well. So that is ongoing. Next, the department should conduct more community meetings and provide forms for victims of crimes to be heard circulation hire more victims' rights advocates. We can all certainly review our efforts community policing is basically the philosophy, the business model of the San José police department the way we do business. Community meetings are one facet of that. We do attend a lot of community meetings and probably on a weekly basis we have officers or command staff going to ten to 15 community meetings a week. So obviously we can always extend our outreach efforts as we've heard and do a better job of that but it's something that we're engaged in, we're committed to and it's just the way we do business. The city should provide more public, obviously the rules committee and the council have given the department direction on how we're going to respond to public record acts requests. We have an enhanced model, a format that we're to follow. And obviously the report that was released in the Daniel Pham shooting is a perfect example of how the process was used and followed. We were given direction and also I might add that that's going to be on a case-by-case basis. Each one is unique and obviously the interests of the public need to be weighed against the interest of privacy, that was done in this case and obviously we need to take each one as it comes. The police department should provide training on mental health issues. We're a leader in this area where our crisis intervention team program. I'm happy to say that we've actually expanded it and we have gone to a little bit of a model change here. We used to offer two classes a year, we've gone to three classes a year and what our new emphasis now is to train, recruit officers, as soon as they complete the field training program but before they're assigned to go out ads as a solo

beat officer on their own, we just completed our first class last month. They completed their field training, we put them straight into a crisis intervention team training, so when they hit the street themselves they have CIT training. That's also going to ensure us for our continuing workforce, those officers have to work three years continuously in patrol, before they can be assigned to another part of the department. That's going to guarantee us that we're going to put officers out with CIT training with three years at a crack. As you can imagine we will have a significant if not the majority of the department trained in CIT. Currently we have 349 members of the department that are CIT trained that are out there right now. Obviously with the recent events and the public concern that has occurred, that has driven issues dealing with use of force to the forefront and that is our priority on the work plan now. We have several initiatives going on in the department. It is of great concern to us, to make sure that we meet the community's expectations and what their concerns are. So like I said this is on the forefront and instead of delving into that now, it is a good segue into captain Kirby's presentation that deals specifically with what initiatives we have going on in the use of force in the department right now.

>> Thank you, chief. I will be repeating a couple of things that assistant chief Katz talked about because it goes in the continuum of what we are doing progressively where do we need to go from here? I will conclude from that, where do we go from here? And specifically areas that you asked for review of force records, what do we do in that forum, what type of training do we give the supervisors and where do we go from here with the related times and measures. As chief Katz indicated last year we started with every in-custody arrest having to be reviewed by a supervisor before the person turns their report in and the person goes to jail. What that has given us is an enhanced performance level. We work under the premise that what gets reviewed gets improved. We have seen improvement in document reporting and probable cause and related incidents that have been moved on to the District Attorney's office. So the supervisory review is working quite well. Arrest report spot audits, now the bureau of feet operations takes at random reports that are turned into our records division to pull in and review not just for use of force but for all levels of arrest on the accuracy of the information, the appropriateness of the supervisor engagement in the incident and the subsequent paperwork that would be needed to be filed to be a complete case to move on to one, represent the work product from the field and two, not have to stifle the detective agency that may get incomplete work and take away from its efficiencies. That is working quite well for quality control management, all the reports that go through the bureau of field operations. We are also asked to look into an early warning system and from an October 14th memo on this particular section, it refers to attachment A, that's what that attachment is, I don't know if you got that or not but it basically gives a time line on what the department's early warning system will involve. It is an extensive practice of where we're looking at best practice models, we're also looking at the cost of implementation and then what do we need to get out of that and the time lines if you don't have it I'll just go over it here. The first phase is just October to January to research and look at best practices we're in that mode now. And from February to July of next year conduct interviews with internal and external stakeholders, including line staff and management, City Manager's office and the like and then phase 3 when we have a determination which way we want to go the price levels we can afford and what we are going to get out of it, phase 3 will be from July to September next year. How does that relate to the use of force? One of the incidents on each of the early warning systems that we looked at was a trigger point on not only the type of force that was used by an officer but the volume of force used by an officer within a certain time frame. So if you have an early warning system that's going to tell you if an officer is having some problems in the field due to normal stress of the job, outside influences, children, divorce, foreclosure, all of those weigh heavily on a police officer, sharp mentally going out every day, the use of force is something that has been looked at as a tipping point. For example, the San José police department looks at four uses of force in a month O&M they use it as a second collective to look at is there a problem with this particular officer, that we need to take a look at. Sometimes yes, sometimes no, it is a part of the early warning system, so we will be using that as one of the criteria on our aerial warning system. One of the other areas that we just heard on, as we went into a memorandum of understanding with CPLE to look at the issues they just presentied to you. That was something brought in collectively. Also we'll be looking at use of force issues as it relates to racial bias. We were also asked to look at training as it relates to policies and procedures and compliance in a standard of normalcy, are we training our officers or is our training adding to some of the problems of our officers. That is what we looked at when we reviewed, how do we train our officers initially in the academy, what do we academy is a state certified academy, all instruction comes from the state. It's validated by constitutional law, California law and various other government laws that oversee the training of an officer so the state can validate to that municipality or the state agency that hires them that they're a certified, post approved California law enforcement officer. What does that mean as far as use of force? It means that the training related to use of force issues follow the U.S. constitution which is basically the fourth amendment, search and seizure, taking somebody and stopping their free movement in society and detaining them. And

arresting them. It also assures that we're in compliance with the U.S. Supreme Court decisions or California appellate court decisions that relate to California law enforcement officers. So all of our training is benchmarked against all of that legal precedence. It's also benchmarked against a review that the state does by coming down once a year and certifying the instruction of the academy and certifying the instruction of our continual training we give to officers. That's very important. You could be a certified agency but if there's no random check to see if you're in compliance, you could get out of compliance. We've always received high marks and not only the documentation we've kept, some of the innovativeness that we've done in imparting this training to not only our recruits but our full time officers have taken back to the state and implemented as a best practice policy. I think that bodes well for the process that we do. The second part was to basically address, what do we do for the individual incident? This is probably our greatest admitted weakness. And where our greatest strength will come from. Let me explain what I mean by that. Currently we increase the supervisors' oversight in an in-custody arrest. We are now increasing the supervisory involvement on incident at the beginning of an incident or close to the beginning of an incident when an incident somewhat levels out in a normalcy we're not in an active involving scene? The officer is being required to notify their supervisor to come on scene and conduct an investigation. Not just be notified at the end of the incident that I did something and the officer is left to their own devices to collect evidence, collect witnesses, they may be understaffed. This way the supervisor comes on scene and coordinates resources as it relates to completing the investigation, locating witnesses, locating evidence, assuring that every officer that's on the scene is accounted for with the appropriate report that they would need to turn in. Like I said I'll go into a little bit more about where we're going next but that's one of the areas that we'll be drastically improving on. We also had recently the ICMA that was asked for by the City Manager to come in and look at the police department. I think public safety as a whole, police department and the fire department. They too will be looking at some of the best practice models for use of force investigation and review. Very positive experience with that group, madam City Manager. Very selective in their experience and very forthright in their recommendation of some of the things we should do. One of the other things we're doing as it relates to not only use of force but contact with the public in general, is the Axon cameras. The cameras that the officer wear as a headset to document some of the things that they write in the report, there's always an accusation, document the officer does in some circumstances. Again it is a test pilot, we'll see where it goes. We'll see the usefulness as it relates to adding credibility to our actions. Police officer are training. We have basically three modes of training. One is the academy that everyone gets. The second one is continual professional training where the state itself recommends certain levels of training. If you can remember over the years we've had training on domestic violence, issues on sexual abuse, child substance abuse, race relations. A portion is related each year about what the state demands and the command staff of the police department demands in what they need to have trained in their workforce. With that in mind, where do we go from here? I think the chief was sincere when he indicated that we take these incidents serious. We are looking for a methodology that will validate our response to mission county involvement and the City Manager and mayor's involvement, are they confident that the city is doing an adequate job . Two weeks ago I was tasked by the chief and assistant chief to intensely look at best practices as it relates to use of force investigations and use of force reviews. Now the police department I think you'll somewhat agree does a great job in investigations. With the amount of homicides we clear, sexual assaults that we clear, national notoriety investigations, it's only going to take a small level of tweaking in that area to come up to stellar performance. But where our model falls short and I'm admitting this because it is going to be like I said one of our strengths is the review of our work product that can give the confidence that it's looked at standardly, it's looked at consistently, and it's addressing areas of not only investigative completeness but also in the appropriate use of force. One of the areas that I included in this memo was the basic premise on what the officer is instructed, and measured against, and that is the degree of objective reasonness and the use of their force it is looked at when a supervisor makes a determination on the use of force. It's looked at right now a criminal case that is at the District Attorney's office and our own city litigators, what is the objective reasonableness of the officer's actions when presented a forced situation to make a determination? But where we are going to be looking at and one of the models I've looked at as the best practice model for come up with a pretty good model of what the federal government because we are enforcing U.S. constitutional laws on what they accept as a best practice for investigating and review. That is the process that I'm working on now. I'm only two weeks into it but one of the things that I can assure you and everyone here is that we're not going to wait until we get to the end of my review and a recommendation to maybe take 40 to 60 days. Incrementally as we look at things to improve our work product we will be implementing it. And let me give you three examples of that. The very first memo that will be going out the very first part of this week tomorrow or the very first part of next week is a requirement that every officer notify their supervisor of when practicable, when use of Forbes is used. That will given an opportunity for the supervisor to come on scene, use their years of experience, use their ability to collect

witnesses and so forth, so on. next will be a model for the supervisor to conduct the investigation. If I ask for a use of force investigation, I want to make sure there is a standardization and parity amongst every supervisor so that every officer will get a consistent this will be coming out a week from now because this committee I formed was presenting this skeletal report. Like everything else we do in the police department we don't want to be benchmarked, against the actual people that will have to implement it. The sergeants and the lieutenants that will receive this work product. Put it to them, does this give you enough information or do you need more? The third memo that will be going out is the role of the lieutenant. So we're working in a progressive manner of oversight and review. Eventually all of our work will be reviewed by a panel and the panel I'm sure will consist of outside police department oversight and review. Again I'm in the infancy stages of developing and modeling this but that is the we have in mind, and keep the chief informed on every use of force incident but also to have a review and a process where we actually state that the force that was used was or was not objectively reasonable. That is something we will have in this process and that's where we go from here and that's the efforts we have done so far on the efforts of the use of force.

>> Councilmember Nguyen: Thank you, thank you so much, assistant chief and Captain Kirby for the presentation. Let me say first that I really want to commend the administration for stepping up, and stating that we are serious about what has been happening and we are serious for our plans to have a review panel and I will speak to that to the mayor's memo in just a bit. But I just want to start by saying, thank you for stepping up and really doing the hard work because this is what the community is waiting for. I have a question about the Axon camera system. Captain Kirby when do you expect this is going to happen and if it does happen are we looking at all officers whenever they're in the field that they have this camera on or are we being selective with the type of officers that are going out into the field?

>> Good question, because it is a pilot program we're trying to get as much free information and free supplies that we can from the manufacturer. They have committed to anywhere between 40 to 60 devices that they will be giving us. They're still on the refinement stages of getting us up and ready. For example, this system takes a huge amount of data download from any department. They have put in the data download to so we can get started. Doing the hardware, software accordance and selection of officers one of the things we will be doing is we'll be using them on a shared basis and so day shift, swing shift and midnight shifts. We will be using the devices as one shift concludes, they will be handing them off as we do other supplies. We put 80 officers on a shift, sometimes they go 60 to 80. So as you can see not every officer will have this device. We have a volunteer core that is going to be using these devices. But one of the things that we will probably be driving the distribution on is, that in the last two use of force reports that we have done, publicly, we know that the majority of force on any other -- other than any other incident is a disturbance. And so if we can direct these devices to disturbances they will in turn probably capture the majority of conflict incidences that we can then document for this device to show its viability. If you look back at the days when and you're very young so I'm not sure if you remember this or not. But when we first had cell phones, they were called bricks and they literally looked like bricks.

>> Councilmember Nguyen: I remember that.

>> That's the stage we're at. We will be able to talk about the complexities of the device the weight and the structure of how we're going to put this on an officer and actually have it to be used and not interfere with their normal comfort of working ten hours. But with that we'll be able to drive the industry on what it is that needs to be changed. And so this is not probably the final device nor is it probably the final company that will assess, because there are other competitors that will want to use this as a test market. But I think in the interim what we're looking at is probable about another six weeks to -- for first implementation?

>> These are prototypical devices that they keep refining to get the final products. We had some officers on Veterans Day with prototype devices so we're getting close. We deployed them on downtown services in the entertainment zone services, I think that would be critical violent crime enforcement team or gang suppression unit, get them out maybe our traffic folks too. Get them spread out in the community in some of our specialty units as well.

>> Councilmember Nguyen: Okay. And we did a little research about some of these devices and obviously it is not about Axon, but how is that different from the typical device that is about this small and they clip it on the uniform and it is able to record video, physical image as was audio? And this is a lot more expensive.

>> And this is part of the analysis like I said we're in the beginning stages. This was one that was offered to us because we had looked at a series of other devices for recording. One was the Taser that we deployed, we looked at a Taser cam that was a part of the Taser device on the bottom of the Taser instrument. Ill little bit problematic. we did an assessment on that determined the -- field resources said I don't like taking this thing out, looks like I'm pointing it to a person when I'm using it as a camera. Axon has some features that other industry leaders don't have. We'll be looking at that and making a choice somewhat on finance cost durable and ease of the officer to use without interfering with their police activity .

>> Councilmember Nguyen: Just one thing I wanted to say, I don't want this for example if Axon devices are so expensive, they range 1400 to up, which is around 6 to 800 in the future if we see through this pilot program that this is effective or can be effective, you know even though we don't have money for the Axon devices that we can use other devices in supplement for the kind of work we wanted to do but just because of the cost factor.

>> I think we're all in agreement on that issue. .

>> Councilmember Nguyen: And I wanted to speak to the mayor's memo. I think the mayor is taking a really good step wanting to involve the IPA as well as the City Auditor to convene this working group with the City Manager but at this time I also recommend that this committee really take into consideration of also inviting one community member to really represent the community and actually, because the mayor actually has someone, you know, he actually asked for the IFA and also the City Auditor. I'd also like to have the City Manager reach out to Michelle Lu for AACI, the reason I recommend AACI rather than other organizations, this is an organization that worked with patients with mental illness, domestic violence cases. They understand the importance of keeping things confidential, they understand the importance of keeping police records confidential. I'd like to also as we move through this process and once we make the motion to accept this memo, to forward the City Manager to include that as part of our outreach. And then when you come back 45 days from now I wanted to hear was your perspective in terms of including a representative from AACI. And also I want to say representative from AACI, I don't mean a junior staffer or receptionist. I want a management director to be involved simply because we're working at a very high level and because some reports are so sensitive, I would like to see someone that's a high executive level person to be part of this working group.

>> City Manager Figone: If I can respond, I completely understand, in fact, I have a lot of confidence in Michelle so that wouldn't be a problem. I think what we need to do is work through the confidentiality issue which is one reason we can convene this group and do it without redacting records. So if that's the will of the community, we'll get right on that after there meeting and report back to you.

>> Councilmember Nguyen: Thank you.

>> If I might address that question, I think the manager's office will be working with the City Attorney's office, on the matter of confidentiality, to see if there's a member of the public that can be joined because of the confidentiality issues .

>> Councilmember Nguyen: The reason I'm suggesting this is we're on a good stepping-stone trying to achieve trust from the public. To me, these people, their job is to challenge what the administration does but it shouldn't stop there. I think that by the end of the day, we need a voice in the community to bring any kind of closure, I think this is the way to go .

>> City Manager Figone: Madam Chair, if I could just add, I also envision working with chief Davis and assistant Chief Katz to identify a PD expert who can help facilitate our review. My experience over the last year with reviewing reports is, it is very much a specialty and so, I would envision asking for somebody to assist us as well as the attorney's office so that we have a full complement of expertise that we need in order to go through this in a way as the mayor and hopefully the committee agrees we need to get through it in short order.

>> Councilmember Nguyen: Thank you. Are there any questions or comments from committee members? Councilmember Oliverio.

>> Councilmember Oliverio: Thank you. You know the topic came up about money for the devices so -- and that's about a device. But when we're -- obviously the police department the City Manager and the council is looking to manage our current situation. But I guess my question is, setting up new procedures, policies, et cetera, what is the toll it will take on the internal workings of the police department? I'm assuming your time, and of everyone on this project is not now doing something else, so whether that be sworn or unsworn, because if we want transparency, at any department, it's not necessarily free. There's a cost to it. So any time the council wants a particular item there's a cost to whatever department so could I get a little on that?

>> Sure. I think what we did, I think the question was asked yesterday how much time we spent on the redaction of the last public records act request that we did. We had several people involved, sworn, nonsworn. I must say the intensity for which I've asked the committee I put together, to working group, the intensity which the City Manager needs this information and if public is demanding this information, I put a renal group on, the time is cannot expensive I haven't pulled anybody intently and I've picked levels of expertise that have been looking at this issue for a while so they're not inventing the wheel from scratch so I think the efficiency will be pretty good. Once we establish the process so if I was to say give you a benchmark maybe I'm going to spend three to 400 hours, and it's completeness of writing policies, procedures, templates of investigative checkoff list and things like that, once it's implemented then it becomes part of the protocol of the supervisor as part of their daily activity so it's not -- it's an enhancement to their activity but if I look at the amount of incidents of force in the city we have now it's about two and a half incidents of reportable force. That's all the way from a twist lock with pain to a Taser use or something like that. So two and a half incidents within a 24 hour period spread over 96 teams, I think the work product is not going to be the excessive for the intensified and the program that we will put forward will benchmark the options of availability for what the commitment is going to be from the police department presenting records and I think we'll be able to give you a time line on what we can -- we'll have to pare out from what we're doing. Right now I don't have some real intensity on it but the efforts that those who are doing is not that disruptive in their normal patterns and it is extremely important.

>> Councilmember Oliverio: Thank you. And sparse moving forward with the memo from the mayor's office, I would be inclined to move it as written. But on the verbal notification I would want to hear from the mayor's office if that's acceptable to them so I don't know if this is a good time to --

>> Actually, the mayor is concerned about the confidentiality if you read the referral, he talks about no redacting. And the reason is because he's looking at a stream lines process where the individuals that sit on the committee because they are employees of the city, are able to look at reports without the redaction part. So bringing in someone is something that the city attorney's obviously, looking at the amount of work that's going to be created to have to redact the reports is all things that we have to consider before you open it up to someone from the public coming in. So that's a concern that the mayor has. Any other questions that you have on --

>> Councilmember Oliverio: No, I just wanted to understand from the mayor's perspective outside the written memo. So it's my concern as well. I'd rather just follow the legal procedure and then if it comes back then we can talk about adding an outside party. But I wouldn't want to do the verbal modification today, that's my point of view.

>> Councilmember Nguyen: Councilmember Constant.

>> Councilmember Constant: On that review of the external person, I'm assuming you'll be looking at the police officers bill of rights and any issues that may arise out of that.

>> That's correct, councilmember.

>> Councilmember Constant: And I would also request that we have discussion with the POA on that because I think one of the things that's really important is that we put in place a process that the officers can trust, and we know, from the conversations we've had recently like yesterday, in Rules, that the POA really encourages its officers to comply in the investigations following the use of force. And we're not forced to use the lieburger of reversed Mirandizing them to get them their statements and I want to make sure that whatever we do does not create a sense in the police department where there will be less willingness to work with the administration to address the community. So logistically how do we go forward from here? What's the time frame? I know the mayor's asking for 90 days which is pretty short for us to get information back and make a decision.

>> Councilmember Nguyen: Actually can I make a recommendation real quick? Just to speak on Councilmember Oliverio's point about having the City Manager come back 45 days to let us know whether it's feasible to have a community representative be part of this working group. To me, that's a very long time. I imagine that when the City Manager can come back with a verbal report, that she'll be able to talk to us about convening the working group and the status update of what they've done but waiting 45 days to be able to, you know, allow a community representative to be part of the working group we don't really need 45 days. We can actually do it within a couple of days or a week.

>> Madam Chair, when the referral was heard by the committee the item was scheduled to report out at the December 1st council meeting. However, the december 8th, that will be an opportunity to work with the city attorney's office and get better determination in terms of what the options are for the council to consider.

>> Councilmember Nguyen: Okay, I'm okay with that, then.

>> Councilmember Constant: So with that if you're okay with this motion I'd like to make a motion that we approve this with direction to the City Manager and City Attorney to return at the time this comes before council on December 8th with an analysis of the alternative that you've provided.

>> With that motion would this item be cross referenced on the council agenda?

>> Councilmember Constant: Yes.

>> Councilmember Nguyen: Yes.

>> Okay.

>> Councilmember Constant: And also, the outreach to the POA that I mentioned.

>> Okay.

>> Councilmember Nguyen: Okay, we have a motion and second. Before we vote on this, I have a couple of cards from the audience that wish to speak. Raj. Oh, did you want to speak on this or was this for a previous one? Oh, okay, come on up.

>> I just wanted to say that we are very thankful to the mayor's memo on this. We think it's going to be a lot more of relevant and valuable activity than the CPLE study which we think is three years too little too late to have any real value. I also wanted to support Councilmember Nguyen's idea of bringing a community member that's well respected across all the different ethnic communities in San José, Michelle from AACI. Which is a really good effort of good faith the more value it would have and more trust in giving us navigation moving forward. The last suggestion I wanted to give though because I really feel that use of force issues is tied directly to validity of arrest issues, particularly resisting rather. I would also like to offer that the public defenders office, be used, use of force and police reports and validity of arrest. I think those areas of linked and we can't have one without the other .

>> Councilmember Nguyen: Thank you, Michelle Lu.

>> Thank you, good afternoon. I also wanted to add my thanks to the mayor for his memo and to thank Councilmember Nguyen for recognizing we need community CPLE just talked about the need to build relationships between the community and the city and we think this is a good way to do it. As I think you all know, AACI is a 36-year-old nonprofit organization based in San José in Councilmember Oliverio's district. We provide an array of services from mental health counseling to domestic violence shelter, et cetera and we handle confidential files every day. We have served on a number of city task forces in just the last year alone and we hope that we have the opportunity to bring our professionalism to the table this time. Thank you.

>> Councilmember Nguyen: Thank you. Anybody else wishing to address the committee? Okay. Scott Knies.

>> Good afternoon, Madam Chair, members of the committee. Scott Knies, executive director --

>> Councilmember Constant: Squeeze the handle.

>> Executive director, San José downtown association. The association is very supportive and applauds the mayor's memo. We appreciate the City Manager's leadership along with the IPA and the City Auditor to help, as Councilmember Nguyen said, retrieve public trust around this issue. I found it interesting how the CPLE report to you just before this was kind of coming to much the same conclusion, separately. Seemed like the two memos were -- their report and the mayor's memo was coordinated but indeed they were not. And kind of arriving at the same place here, that San José has grown, too large and diverse a city for just the police department to police themselves. And we understand that we are going to crawl before we walk and walk before we run, and this is a step in the right direction, bringing the manager and the auditor and the IPA in to help the police. Thank you.

>> Councilmember Nguyen: Thank you. So I'm sorry, Councilmember Constant.

>> Councilmember Constant: Before we actually vote, I think it's important to acknowledge the police department. I know we've heard, thanks to the City Manager and CPLE and the mayor, but really, the police department, in the paper just recently was being criticized for not doing anything. I can tell you as co-chair of this committee and sitting here for three years, there has been a lot of things that the police department has done in the last three years, to address a lot of these issues. Of course, some were after controversies, but we can't lose sight of the fact that there were a lot of things done through this committee and through the police department before some of these controversies came to light. And I'm sure it was an oversight by some of the people speaking not to acknowledge the chief and the police department but I think it is important that we recognize that they're not sitting on the sidelines saying, we're right, we know what we're doing, leave us alone. There's been a steady progression of work towards a resolution. I think it's a long way to fixing the risk within some portion of the community and I want to stress that San José is a very large community and that there's a lot of people that do have a high level of trust with the police department. And I think this is just going to help us strengthen that trust in those areas, and rebuild trust in some of the other communities.

>> Councilmember Nguyen: Thank you, Councilmember Constant. So we have a motion and second, to accept the report with the appropriate amendments. All those in favor? Opposed? Hearing none, the report is accepted. Thank you very much. Okay, up next we have we're down to number 5, the comprehensive annual financial report. Welcome, Scott.

>> Scott Johnson: Good afternoon, Madam Chair, members of the committee. Scott Johnson, director of finance. I'm joined here by our auditors, Cindy Pon, and David Bullock, the managing director for the redevelopment agency's audit. Cindy Pon is the managing director from Macias, Gini and O'Connell for the city's audit. Just want to remind you that our City Auditor, Sharon Erickson is charged per the city charter to cause the audit to be conducted each year. The last couple of years as we've worked with Ms. Erickson we've had a lot of collaboration, we've shared a lot of information, we've included the internal auditor's office in a number of meetings with our external auditor to make sure she's apprised of the issues and the financial statements as we move forward prior to issue. And she's also had an opportunity to review them as well. So what I'd like to do is, we have a -- I'd like to highlight a number of areas in our comprehensive annual financial report. This is the audit report for our fiscal year ended June 30, 2009. I was going to highlight a few areas of the actual report, go through some of the numbers, and try to run you through a few of the pages that I think is important to highlight. And then we will be available for any questions that you may have. First let me say that you know, I think you'll find the cover quite interesting, under the theme of the City's Green Vision. And I want to thank Mr. Tim Tung who works in our debt division. He did some of the artwork, and captured that and took it from another brochure that we had and put this all together.

>> Councilmember Oliverio: The cover's good enough.

>> Scott Johnson: Inside cover, thank you. And then also the second page in the report, this is an acknowledgment of all the folks throughout the city that have been involved in the preparation of the report. So it's not only a finance department report, it's across the entire organization. So I want to thank not only the folks in the finance department but all the folks that are listed here that assisted us in preparing the report in bringing this

forward to the council. So finally on the next slide, I want to call your attention to the table of contents and that's right after we list the staff in the preparation of the report. The letter of transmittal, the City Manager and the director of finance sign the transmittal. It highlights some of the major divisions of the city, and it's also formatted in the format consistent with the government officers association of the U.S. and Canada. In addition we have a management discussion and analysis section and I'm going to refer to that a couple of times as I go through some of the numbers. This is where management provides an overview of financial analysis of the changes in the numbers, as well as significant financial activities that occurred during the year. The other thing I want to point out is that these are -- we have both government-wide financial statements so we're consolidating a lot of information we are a conglomerate, very complex financial organization and this is like a consolidated GASB 34 that was implemented several years ago. Finally in the report there's the auditor's opinion. So in the next slide, I'm going to ask Ms. Pon if she would highlight. This year, it is a little unique. It is a little paragraph in the report, hopefully it's the only year that we're going to have this, but it's referring to an emphasis of the matter, but Ms. Pon fair presentation of our financial statements.

>> Okay, good afternoon, thank you. As Scott discussed, the city's CAFR encompasses the entire city's funds. Our audit report is located on page 1 of the CAFR. The scope of our report is in the first paragraph. The scope includes the City's governmental activities, the business type activities, which is represented by the City's government wide financial statements. Each major fund of the city and the aggregate remaining fund information. The financial statements are the responsibilities of the city's management. Our responsibility is to express an opinion on these statements. We conducted our audit in accordance with auditing standards generally accepted in the United States. Our paragraph is found on the third paragraph on the report. And it is an unqualified or a clean report, which is the highest level of assurance that we could provide. Which means that the City's basic financial statements present fairly and in all material effects with Gaap. These paragraphs do not change our audit opinions but focus our readers on. The first emphasis of matter is pretty common these last few years given all the changes in the accounting standards. This year the city adopted the provisions of GASB, pollution remediation. Obligations. And this was discussed further on pages 44 and 88. Unlike prior years, the second paragraph after our audit report, audit opinion is not as common to the city, and it directs the reader to note for D, which is found on pages 105 and 106 of the audit report. And this particular paragraph discusses an uncertainty related to the potential impact of the state's \$75 million property tax shift out of the redevelopment agency and its impact on its operation and its initiatives. So that's highlighted this year. The last two paragraphs of our audit report are standard reports related to other elements of the CAFR including the management's discussion and analysis, transmittal letter and statistics. I will turn the presentation back over to the finance director who is going to discuss the highlights of the financial results of the CAFR.

>> Scott Johnson: Thank you, Cindy. So on the next slide is what's referred to as the statement of net assets. And this is a consolidated statement showing all the government activities which are the General Fund, capital project funds, special revenue funds and our service funds. In addition it captures the assets and liabilities and net assets of our business type activities. Those include our treatment plant, Muni water and the airport, to name a few. And finally it also includes the fiduciary funds which include our two retirement funds, because we are a fiduciary, where basically these are trust funds that we account for in our financial statements. So there's a few points that I wanted to make note of here in this statement. First of all, our total net assets for the organization as a whole is a total of \$9.9 billion. That's good news. And obviously, as I mentioned before, you know, we are a large organization, very complex. Unfortunately, that's a reduction, when we compare it to the prior year. Last year, our total net assets, that's our assets minus our liabilities, was about 11.1 billion. So our net assets over the year have been reduced by about \$1.2 billion. So let me talk about each of the components. The governmental activities total as you can see here, close to \$5.1 billion. Last year we were at about \$5.5 billion. So we've had a reduction of about \$440 million in our governmental activities. The main reason for that is, as you'll note on the next slide, our General Fund, we did use some reserves and some one-time funding. In addition we're spending down bond proceeds for our capitol projects. And finally on the fiduciary funds, those funds have gone down by about \$850 million and the detail of those funds, as they relate to the retirement plans, are on page 169 of the audit report. And so there's been a lot of discussion about the market value, the market, overall market and the impact on our retirement funds as a result. So just for this fiscal year we've had a reduction of about \$850 million between our two -- a net reduction between our two retirement plans. In addition I will call attention to the fact that on page 7 of the management discuss and analysis section which is on page 7 of the report it goes into more detail of the variances of the City's net assets. Know then turning to the next slide, this is a snapshot of the General Fund is the current year versus the prior year. And this is a very high level looking at our fund balance at

the beginning of the year versus the end of the year and you can see what changes have been made to that. As I referred to earlier our fund balance, or any fund balance ending June 30, 2009, was reduced close to \$66 million. There have been a number of reports going to this committee and to the council, regarding the lower receipts. Here on 13 of the management audit there is more detail related to the changes in our fund balance and the use of those funds over the last fiscal year. Turning to the next slide, this is a slide showing our General Fund expenditures. This is -- and comparing to the prior year. So this is under the categories as you see here, these are very broad categories. So our total expenditures actually were increased, compared to from '07-'08 to '08-'09 by about \$31 million. We went from \$697 million in expenditures for the General Fund in 07-08 to \$729 million in fiscal year '08-'09 and there's much more detail in regards to the variances related to our expenditures on page 13 of the management discussion and analysis section of the report. The next slides are a brief overview of the subsequent events that we do have a footnote that Ms. Pon referred to earlier, related to the nature of interest. And as she mentioned, you know, as council is aware the state did borrow city property taxes 8%. The good news is that we did -- we did participate in the securitization program so we'll be getting those installments so the city will be made whole in regards to that reduction of approximately \$20.5 million for our General Fund. In addition, on the next slide, there's a discussion of the CRAF taxes, the state educational revenue augmentation fund and the \$75 million take from the Redevelopment Agency to the state, and there's much more discussion in regards to that in the subsequent note but note in the CAFR. And then finally the letters of credit as they relate to the redevelopment agency on the recognition of a short term liability of 5.3 due to a subsequent event where the redevelopment agency was successful in renegotiating letters of credit with J.P. Morgan as they relate to the variable rate debt for the redevelopment agency. So finally, those are the highlights of our report. One other thing that I do want to mention, there's been a lot of discussion with the council in regards to our two retirement plans. And as the council's aware, we do actuarial reports, the two plans do the actuarial reports once every other year. And so what is disclosed in the footnotes in regards to those actuarial reports really is outdated. What we did put in the footnotes and the MDA section, a note that although those are stale dated numbers, when you look at the funding trend in regards to the two retirement plans we note the reduction in value of the plans by the end of the year. We're available to answer any questions you have in regards to these reports.

>> Councilmember Nguyen: Thank you for the presentations. Are there any questions or comments by committee members? Councilmember Constant.

>> Councilmember Constant: Thank you. I know you guys had a busy year with all the refinancing and letter of credit so we appreciate your work. Scott, you mentioned the retirement systems. I have just a couple of questions. Just first of all, for readability in the future instead of referring one is the plan and one is the system, would it be easier or would it be available for you to say PF and F because I kept finding myself having to flip back, retirement system, the system and the plan. And I know, I know a lot of about these systems and I kept having to reference myself back. I can imagine for a member of the general public trying to decipher that we're talking about a couple of plans here and you go a couple of pages more, whatever page it is, 96, and then you're talking about the -- maybe it was after that, the retirement. I mean the redevelopment agency has the defined contribution plan. So I think it would just make readability a lot easier. On the every-two-year actuarial process, is that a city driven policy or a board driven policy?

>> Scott Johnson: That's a board driven policy and it is my understanding, I also serve on the police and fire retirement board as the city's representative. It is supported by the department and the administration to move to annual reports.

>> Councilmember Constant: And then, on the agency, defined contribution plan, is that administered through the deferred compensation advisory plan or is that a defined contribution plan?

>> Scott Johnson: I'll refer to Mr. Baum.

>> David Baum: Councilmember, the agency has a group of trustees that come in for that plan and that's currently fully funded.

>> Councilmember Constant: The reason I asked was because when I went through recently when we had all the boards and commission analysis, the linkages between things but I never really realized that it was separate administration until I was reading this and I thought that's what it said. So it's just good to know that. And I think

that as we, since retirement is such a big issue, I think I know I would like to learn more about what's going on with your plan, and how it's administered and how decisions are made, so that I compare that to the work that I'm going to figure out how to do on the deferred compensation advisory board and the retirement plan to be able to kind of connect the dots, you know. Other than that it was thrilling reading. It kept me up all night.

>> That's impressive. And Councilmember, I appreciate your remarks how we distinguish with the various retirement plans. I find myself doing the same thing, going back saying which one's the plan, which one's the team? We can definitely take your suggestions for the future.

>> Councilmember Nguyen: Councilmember Oliverio.

>> Councilmember Oliverio: If I'm not mistaken it matches at the same percentages that the the city does, 3 to eight ratio but the return is not guaranteed, is that correct?

>> There's huge difference between the agency's defined contribution plan and the city's endefined benefit plan. As I mentioned the agency provides just a contribution which is about 9% of the employee salary. I believe the contribution to, say, the federated system is north of 20%. The agency doesn't provide a guaranteed payout upon retirement. It's up to the individual and the agency like on the corporate side, to do a 401 K type of distribution of assets into probably you know 14 different mutual funds. It is employee driven and not a contingent liability for the city's plan.

>> Councilmember Oliverio: To have a \$9,000 thrown in ?

>> Yeah, it's hard for me to know what the private sector does but certainly it is a generous plan.

>> Councilmember Oliverio: Fair enough. And then on the J.P. morgue letter of credit that comes up again for the agency, so let's say we pass a budget on December 8th and we do all of these we'll get there one way or the other with a big sausage memo and at the end of it the letter of credit comes due. Because we've exhausted everything and we've spent nearly everything, what happens? Is the General Fund at work or how does that work ?

>> Mr. Baum, you may want to --

>> It's raised as an item on the city's CAFR. But if you look at it legally, the agency is a separate legal entity. If the 100 million was due to J.P. Morgan, it would be the responsibility of the agency and not the city's general fund to them on the whole.

>> Scott Johnson: Let me just add on to that that if the agency was not able to make the obligations or if they had limited funding, I think that's what you're getting to. In our disclosure there is some discussion about some of the agency's debt, that the City's General Fund is junior -- basically it's junior debt where the City's General Fund potentially could be at risk for funding for example for the convention center, the 4th Street garage, the agency's ERAF loans and SB 108 loans. It is roughly about I believe it's about 24 million that's junior debt that if the agency wasn't able to make obligations that's where the city has a legal obligation to pick up those obligations on an annual basis.

>> Councilmember Oliverio: Just for my understanding, we run kind of a reserve, what type of reserve do we have at RDA?

>> We always have a certain A cash on hand based on commitments to project or complied commitments so today we have over 100 million in the cash balance.

>> Councilmember Oliverio: Prior to us doing a budget on December 8th?

>> As of the budget that was submitted on October 26th, yes.

>> Councilmember Oliverio: Okay. I just wanted to make sure that as we go through forward with our budget responsibilities on one side that it doesn't implicate anything on this side. Because I'd rather be more just because I have money sometimes doesn't mean I have to spend it. I think it's sometimes wise to be in a position of strength and having it in the bank and lo and behold if you have a better budget year you can spend it later. Thank you for the --

>> Scott Johnson: Madam Chair, if I may, I also want to mention that the City's CAFR, comprehensive annual financial reports includes a number of entities that relate to the city, including the redevelopment agency, although the redevelopment agency is a separate legal entity for financial statement purposes, it's considered the family, within the city's financial family. So it's the redevelopment agency activities, it's blended within our CAFR but the redevelopment agency also issues a separate more detailed comprehensive annual financial report specifically remitted to the agency's activities.

>> Councilmember Nguyen: Thank you. Councilmember Constant.

>> Councilmember Constant: Yes, just for Councilmember Oliverio, the match is almost a three-to-1 match in their defined contribution plan, just as a reference to other outside plans. I just want to make editorial comment. Sit next to each other every day right?

>> I think that's the case.

>> Councilmember Constant: And throughout the organization and we don't treat them as different-class people. That's just an editor come on where the city might or my not over the last couple of years. And the last thing I wanted to say, probably one of the most impressive things, going to the page that has our ratings for every different category and there's a lot of As on those pages and I think given the state of the national economy and our own economy and what we've had to do in the budget over the last eight years, I think it's a pretty impressive feat and a motion to accept.

>> Councilmember Oliverio: Second.

>> Councilmember Nguyen: We have a motion and second to accept this report. Is there anyone in the audience W.H.O. who wish to speak on this item? All those in favor? Opposed? None opposed, the report is accepted, thank you. Is that all for 5 A through C? That's just 5A, right? Comprehensive annual debt report, 5B.

>> Scott Johnson: Did you want to do the redevelopment agency's presentation on the CAFR now or do you want to wait? It's up to you. Since Mr. Bullock's here.

>> Right. When you accepted the report did you include the redevelopment agency in that acceptance? Or would you like us to briefly provide --

>> Councilmember Nguyen: I did. I don't know what my committee wants to do.

>> Councilmember Constant: I've read these things exhaustively and we don't need to talk any more about them. We could make that motion, just to wrap up the last two. Unless there's anything you guys are really dying to tell us about either one of them. My motion would be to seven B and C.

>> Scott Johnson: It's A, B and C?

>> Councilmember Constant: That's what I meant to say, I haven't learned my ABCs yet.

>> Councilmember Oliverio: Second.

>> Councilmember Nguyen: We have a motion and second to accept A, B and C. Actually we accepted A already, so B and C.

>> Councilmember Constant: That's what I said, you corrected me.

>> Councilmember Nguyen: All those in favor? Opposed, hearing none motion carries. Thank you. So we'll move down to 6 A. First quarter investment report.

>> Scott Johnson: Thank you. And we will keep this brief but one of the reasons why we wanted to make an oral presentation to you is that this committee has requested some analysis and discussion regards to the City's General Fund cash position. So with me today I have Julia Cooper Our assistant director of finance. And Arne Andrews was recently promoted to a vacant position we had, I want to thank Arne and welcome him in his new capacity.

>> Councilmember Constant: Welcome.

>> In terms of the summary of the quarterly investment report, the size of the portfolio has decreased to just under \$900 million. The earned yield at 2.64%. Weighted average age of matures, dropping to 359 days. We have interest earnings to date of just over \$6.6 million. No sale of securities prior to maturity date therefore no realized gains or loss. And as pursuant to the investment policy we have semi annual agreed upon procedure audits done by Macias Gini and O'Connell. That copy of that report is included and no exceptions were noted.

>> Scott Johnson: The next lied slide on the issue of the cash balances, we have been monitoring our cash balances, obviously we do that on a day-to-day basis for our entire portfolio. Especially on our General Fund cash balances, trends and variances with regard to our revenues our expenditures and so on. Our expenditures are relatively consistent month to month, that's what we're seeing, there's no big spike there. But as you know, a majority of our conference are seasonal, property taxes, sales tax and so on. And we continue to monitor the cash balances on a daily basis. But I want to get into a little bit analysis with the committee. And on the next slide can you see the historical seasonal difference in the text balance.

>> Councilmember Constant: I was trying to see if it was in the report.

>> You do have copies.

>> Scott Johnson: They do have copies. You can see here the procedure you see on the screen, the blue versus the red where we have the red because of the seasonality of our revenue streams where there could be a significant variance in our General Fund cash balance. For example, looking at June of '06 through October of '06, the reduction is about 138 million. And recently, the June '08 to October '08, our reduction was about \$238 million. Then more recent that that, June of '09 ton October '09 we had portfolio reduction the main reason for those two years, is because the council we move forward on a prefunded, prefunding policy related to our retirement contributions. So we're prefunding that, we're using cash, we're investing that with the retirement plans and theoretically the retirement plans are going to have a higher rate of return and so we have a net gain on the General Fund, and all of our funds that contribute to the retirement plans. And specifically on this next slide, this is a schedule that shows our General Fund cash balances. And this is where we see, just for the period ending September of '09, where we've had some variances in our revenues. Our revenues are down about \$23 million. And our expenditures as I said, they're pretty close. But the prefunding allocation, a net disbursements because of the prefunding was an increase of about close to \$6 million. So year-to-date our ending cash balance has actually gone down about \$67 million, because of the decrease in our revenues and collections, and because of this -- I would say kind of slight increase in our disbursements due to the change in prefunding from one year to the next. So our year-to-date, our ending fund balance, our ending cash balance for the General Fund just for the General Fund was about \$36 million at the end of September. So I actually just brought this up to the City Manager's general review and talked to the department heads in regards to this because we're working and partnering with the budget office to do a lot more hands-on monitoring in regards to our cash position for our General Fund. So a couple of points that I made, one is that we need to be very diligent in regards to our reimbursements for grants. You know the stimulus package we're being very proactive in getting stimulus funds to stimulate our local economy. But most of that is on a reimbursement basis. It's very important that we work with our local departments to make sure we have those reimbursements timely. Decentralizing some of our billings, make sure they're billing on time, if they notice a trend in delinquents, we can be very proactive up front working with the disbursements to bring the funds into the city's General Fund. We know that our revenues are down, our expenditures are up slightly because of some, you know, increases in pay from certain bargaining groups and our

increases in our retiree million program and our retirement contributions. So we'll continue to monitor this as we go forward, monitor our cash flow. The last slide is looking at our entire portfolio, just to remind the committee, looking at our total portfolio in totality, it is over \$nine billion. It's not that we're going broke or we have a cash flow problem, but for the General Fund we need to keep our eye on to watch trends . The next set of slides I'm going to ask to recuse myself from this particular discussion because this is talking about a change in our investment policy that our staff has been working with the city attorney's office and the housing department. And because my wife works for a major bank there could be a potential conflict of interest for me to be involved so I'll just let Julia --

>> Councilmember Constant: Can we ask questions on what we've heard already so we won't have to call you back.

>> Scott Johnson: Yes.

>> Councilmember Constant: First of all I would like to commend you for calling our attention to the cash balances and educating us on it. I don't know, when you see a slide out of context you go oh my God where did that number go. But when you present it in this context it makes it a lot easier for is you to see the whole picture. And then just always trying to make things easier to read so I can stay awake through it, if you look on page 11 of your memo, the chart of the U.S. treasury yields, it is very easy to read in color or black and white. But when you go back to page 4 of 12 I couldn't tell which of these lines were which of these numbers because there's no triangles or rectangles or dots or anything to delineate. I tooth figure ifed it out but it took a lot late at night.

>> Scott Johnson: Councilmember, we submitted the reporting color and expected that it would be online, the link would be in color but for some reason it turned out in black and white.

>> Councilmember Constant: Even when it is, we have a standard policy, we print everything in black and white unless we need the color. If we could use the triangles and rectangles that's it for me .

>> The next portion of the agenda, revision to the investment policy. In June of this year staff was directed to research the feasibility of including a foreclosure mitigation as an additional criteria for making investment socially responsible and economic development policy consideration that are kind of acceptable within the investment policy, the guidelines set by the State of California and nationally. We worked with the housing department and we are going to go through our recommendation for those changes.

>> Thank you, Arn Andrews, treasury division manager. One of the first components we thought we had to look at when we received this request was just to find out if it's an acceptable addition to the policy. And upon our review we found it was an acceptable specifically we found that member organizations included the government finance officers association and the California debt and investment advisory commission actually show social responsibility components in their sample investment policies. And then to try and find a peer review we actually tried to locate cities in the State of California that might have a socially responsible section. While there are not many of them we were able to identify some and so it appeared as if this was going to be an acceptable format for us to start. So based on our analysis staff is recommending that the council add a social responsibility component for mitigation, liquidity and yield evaluate. The next component of the request was we had to figure out how to operationalize it and the finance staff determined that while we are good at understanding asset allocation in the portfolio we did not feel we were capable of determining who were mortgage servicers in the area and what metric or metrics might be used to evaluate their performance. So we started having discussions with the housing department and there are representatives from the housing department in the audience today. And in those discussions it was determined that the best identifiable measurement of foreclosure mitigation was participation in the national home affordable modification program. And then further in discussions when we tried to identify okay, what type of financial entities are we going to be dealing with, it was determined that the primary mortgage servicers in this city are J.P. Morgan Chase Wells Fargo, and Bank of America. So from an operational standpoint that started to become conceivable, short term investment instruments which from afternoon investment standpoint would make it easy for us to evaluate. So a summary of our proposal which is in the memo is to maintain the primary objectives of safety, liquidity and yield and that include the objective of social responsibility specifically foreclosure mitigation, and that would be subordinate to the primary objectives. It would be specific to

short term investment instruments. These instruments would have to be substantially equivalent in safety, liquidity and yield, and we would then be able to differentiate between them, based on their level of participation in the HAMP program and it was also addressed in these meetings with housing that another good metric of just assessing a financial institution in the area is their corporate rating of satisfactory or higher. And that's their community reinvestment act. So our recommendations are to accept the first quarter investment report that was introduced and to direct staff to prepare the necessary changes to the investment policy and return to city council with the profit evolves and amended documents and I'm available for any questions based on the memo and how we decided to operationalize the request.

>> Councilmember Nguyen: Thank you for the are work. This is a memo that I co-authored with Mayor chuck Reed and in June and it is nice to have the necessary homework and come back with the recommendations. I understand the sworn-in part of it obviously we want to be financially stable and we wanted to be sustainable and not have this particular component hinder or hurt our financial state. And so I appreciate that. So thank you for the hard work. Councilmember Constant.

>> Councilmember Constant: My question, if you can go to the previous slide, pleats. On the -- how are we going to define substantially equivalent?

>> Well, I didn't go into depth on the slides. But in the memo I kind of walked through a narrative of how we would operationalize it if we were looking at commercial paper issuers. There are two sieves going on. There is the primary sieve which is one we utilize in internal credit review process and any investment that's going to end up being on our approved list has to go through our internal credit review process. Recommendations through housing and our recommendations from them there is this other sieve that our mortgage servicers in the area and our level of participation in HAMP. So if we had an in this case two of the identified servicers in the area are already currently on our approved list. That would be Wells Fargo and Bank of America. So if J.P. Morgan were to meet our credit review which a year after the financial dislocation, my sense is if you direct us they would, all three servicers would be approved. So if we decided that it was appropriate at that time to have a commercial paper from a financial institution in the investment portfolio, and all of them maintained similar credit characteristics, which they would, I've checked this morning, we would then look at their posted rates, and based on what I saw this morning, they are fairly equivalent and they would be very equivalent credit assessments to the portfolio. We would then look to HAMP participation which is posted monthly by the national government which is why that was another easy doesn't to operationalize this. And based on percentages we would then say we want a financial institution commercial component to the portfolio they have similar credit characteristics and this financial institution X has the highest level of participation in HAMP therefore we would utilize them as an investment.

>> Councilmember Constant: I understand that process but is 20 basis points substantially equivalent in return? Is 50 basis points? Because when you're talking about a total portfolio \$9 billion --

>> That's a good question and actually we put a lot of thought into that because originally we were trying to see if there was a way to allocate a percentage. But once we found out who the institutions were and once we found out we were dealing with money center banks who were going to have readily available financial center instruments, that fell in line with our issuer and per investment type and on top of that our current investment policy also has what's known as the prudent investor standard. And so I think rather than trying to quantify a percentage I think the way our investment policy currently reads between the prudent investment standard and these percentage allocations that are already very quantified that it would be very easy to determine.

>> Councilmember Constant: I think my concern is, we know the players, we saw the list up here today. But if you would have put a list of players five years ago on that screen it would be a completely different list. And we're setting a policy that is going to take us past, hopefully, past this financial crisis, and into, hopefully, an economic boom, that whole picture could change. And you, in good times, might be looking at five, those five companies, and their yield might not be substantially similar, if you define substantial as X versus Y. That's what I'm concerned. How much of this is tied in to today? I feel comfortable today based on what's out there they're all going to be very close. When everyone is paying next to nothing there's not much difference. Hopefully there will be a time when that's not the case. I don't know if I would feel comfortable unless we could have some objective criteria that defines substantially equivalent. That's my concern.

>> Councilmember, one of the other things that Mr. Andrews mentioned is that the criteria within the investment policy there is also certain rating criteria. So what happens is, is because you have the rating criteria as well, they do by definition in the parameters that we're allowed to invest in those types of securities, essentially get to relatively equivalent based on the parameters in the policy. Because we have an A rated requirement we have an internal process that we go through to determine that we believe they're credit worthy enough to make those types of investments. They basically the spread becomes pretty narrow because of the parameters in which we do those investments.

>> Councilmember Constant: So not to beat a dead horse, but have we looked to see under different time periods what that gap could be, amongst a pool in the same rating? Because even if it's only ten basis points, when you add that up on \$9 billion that's a whole lot of money. That's, what, \$10 million I think.

>> Yeah but the other thing to remember too, is that we are specifically restricted to how much of the portfolio can be invested in these types of vehicles. So it would never be that the whole portfolio could be invested in this type of vehicle. And then, for example, commercial paper is only issued for a maximum of 270 days. So we have pretty much of a ladder portfolio so we are cannot even keeping the portfolio necessarily that short and we have longer term maturities. It is part of the whole dynamic of the investment program in ensuring that we maintain a diverse portfolio with any particular type of investment or any particular type of institution. So --

>> Councilmember Constant: I don't know if that clarifies it for me but I can speak to Scott offline a little bit more. Not Scott, someone like Scott.

>> By substantially equivalent person.

>> But we could go back and do some historical analysis if you like in terms of what has been the kind of spread with firms --

>> Councilmember Constant: Before we can do that maybe we can have just a conversation for 15 minutes to see -- to help me get a little bit more in the weeds. I don't want you to do a whole bunch of research that may not be needed.

>> Councilmember Nguyen: Councilmember Oliverio.

>> Councilmember Oliverio: In your research of San Francisco, Los Angeles, Santa Monica, what are these items they are socially responsible about or concerned about?

>> They actually broke down into two categories. Fresno L.A. had more of a time deposit type of program which in terms of operationalizing is much more involved for staff. And then, Santa Monica and San Francisco, they are more of what I would consider socially responsible components and that would be not being able to invest in anything that produces nuclear armaments to anything that would be considered environmentally destructive. They were kind of broad.

>> Councilmember Oliverio: Endangered species?

>> Possibly.

>> Councilmember Oliverio: Okay. I'm just curious because this is -- obviously there is other components of social responsibility. I'm curious what other cities do so --

>> Those two cities had a broad definition of social responsibility. Like I mentioned, L.A. and Santa Monica went more in a targeted development format where they were trying to support smaller institutions through a timed deposit program.

>> Councilmember Oliverio: You had comments?

>> I wanted to say historically, this city had an issue before with divesting from South Africa.

>> Councilmember Oliverio: Did that ring a bell?

>> Did we issue it was removed from the policy.

>> Councilmember Oliverio: Was either one of those policies the fact that it was so broad that it had become too restrictive on their financial options from whatever you know from whatever they told you?

>> That is not necessarily a topic I discussed with them but certainly instances where you started to run into the corporate note possibilities it would Process of an investment advisor RFP which is going to be complete review of our investment policy just to compare it to best practices of other cities in the state and then they're also going to participate in our annual review when we come to council annually. So we take our investment policy serious, we are looking adheres to all best practices in the state.

>> Councilmember Oliverio: So this will be the second time we're really editing the investment policy for social responsibility reasons, the divestiture of South Africa and then this one.

>> As far as I can remember.

>> Councilmember Oliverio: Did somebody said they are a free country now?

>> To the best of my recollection it got amended out.

>> Councilmember Oliverio: When we get through the housing problems we have now we might just take it out sometime in the future?

>> Yes.

>> Councilmember Oliverio: That's it thank you.

>> Council could certainly opt to sunset it.

>> Councilmember Constant: One question that doesn't have to be answered now, you can get back to me later, since we know we have these other organizations, government organizations that have done this, have we compared their actual returns to ours to see if there's been any substantial difference?

>> I don't compare returns based on the social responsibility component but we do look at our sister cities to see where we compare relative to them. And there doesn't seem to be a divergence that I would relate to that. I think it's more what your liquidity needs are as a city, are you carrying in a longer duration or shorter duration and what is the shorter term investment.

>> Councilmember Nguyen: Thank you.

>> Councilmember Constant: Since I'm 26 minutes late for a meeting I'll move to approve.

>> Councilmember Oliverio: Councilmember Constant would you be interested in sunseting like maybe five years?

>> Councilmember Constant: I'm more interested in hearing nor about it. When this comes to council.

>> The exact that we do an annual review we bring it to council every year for approval.

>> Councilmember Constant: I think it's going to come to council on the 8th. As long as we can have a discussion on the 8th I can review more and decide whether there needs to be an option.

>> Councilmember Oliverio: Second.

- >> Councilmember Nguyen: All those in favor, opposed, this report is.
- >> This would be cross referenced because council would be taking action on adopting the policy.
- >> Councilmember Constant: That's what I meant. Move to approve.
- >> Councilmember Nguyen: Hold on, down to item number 7, first quarter revenue collection strategic plan report.
- >> We had a deferral on that.
- >> Councilmember Constant: Motion to defer.
- >> Councilmember Oliverio: Second.
- >> Councilmember Nguyen: All those in favor? Opposed? Hearing none, motion's deferred. Thank you. (inaudible)