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Public Safety finance and strategic support committee.

>> Councilmember Nguyen: Good afternoon. At this time I would like to call the Public Safety, finance and strategic support committee to order. Item 2, review of work plan. 2.1, status report on fire department response to the county jail, that's been recommended to defer to June 18. Can I get a motion?

>> Councilmember Constant: Can I make a motion on both at the same time? 2.1 and 2.2.

>> Councilmember Oliverio: Second.

>> Councilmember Nguyen: We have a motion for 2.1 and 2.2, all in favor, motion carries. Move down to 3.1 consent calendar.

>> Councilmember Constant: Motion to approve.

>> Second.

>> Councilmember Nguyen: All those approved, carries. Item 3.2, bimonthly financial report.

>> Yes, Madam Chair, your report is in the packet.

>> Councilmember Nguyen: Any need to do a report?

>> Councilmember Constant: Is there any sunshine there?

>> I was going to do a brief report not much good news. The performance in our funds, there's not much new news there. The actions we took at mid year I think did put us in a good position for this fiscal year. So we felt we were in a very good position. There are still areas that we have of concern that we're looking at, things like the sales tax ended up worse than we had expected which we've informed you about. Our development fee program still continues to perform, very low performance. That area has continued to fall and will likely bring year end adjustments in the area. Tot is also not performing very well. In the last couple of months we've had large changes in our tot area so we'll be bringing forward changes in that area. Overall the funds should be okay unless something significant occurs.

>> Councilmember Nguyen: Thank you, Councilmember Constant.

>> Councilmember Constant: I think the one thing, the one bright spot in here is looking that the key General Fund expenditures are all lower to date than they were year to date last year. And I think that's going to help us considerably, because each department is taking the necessary precautionary steps now. And that's going to help, so just thank you to all of them for doing that.

>> Councilmember Nguyen: Yes, Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, chair. On the historical trend, how close do we track to a national average on sales tax?

>> You know, we'd have to go back to look on a national perspective on that. Our performance on sales tax even the last few years has been up and down. Last year was a nice year where it was relatively reasonable growth but before that earlier part in this decade we had 20% growth followed by an 18% decline but if you look historically we have to get that information, if you would like.

>> Councilmember Oliverio: It's nice but there's no need to task you. I think it's important because the sales tax turn-ins come in periodically so you as a measure saw that the overall economy number was X you could say San José is up a monetize or minus a point, but that's not necessary.

>> And we have been performing usually a little bit better than the state as a whole.

>> All in favor.

>> Second.

>> Councilmember Nguyen: No action is required. This is for information. Thank you. We'll move down to number 3.4, report on key legislative items.

>> Betsy Shotwell: Thank you, Madam Chair. Betsy Shotwell, director of Intergovernmental Relations. A number of these will be in print for 30 days and then they will be heard. I'm here to answer any questions you may have.

>> Councilmember Constant: Just a brief question. I know in the memo it's noted where we've taken positions. I couldn't find any, is that because we haven't taken positions on any of these or is it hidden somewhere?

>> Betsy Shotwell: That's correct. You'll see next month positions we've taken.

>> Councilmember Constant: There are interesting ones here like expanding definition of a hate crime to include political affiliation. I think some of us could be in trouble there, we wouldn't be able to fight anymore. But on more serious note. One I can't find, that limits the length of time of criminal or civil injunctions on gangs. And I think that's something we should take a look at, we should take a strong position on that because I wholeheartedly believe that if there's an injunction that is granted by a judge for cause, then that duration should be set by that judge and the judicial process should be respected, and

that there are avenues to have those relooked at in the judicial system. And putting an arbitrary cap by legislative action I think is not in the best interest of our city and the public safety of our residents. And being that that is something we pioneered here in San José I think it's important that we take a strong voice on that. So I'd like to see us take a real good look at that and Mort it closely and bring it back at the appropriate time for position.

>> Betsy Shotwell: I recall that bill now, okay.

>> Councilmember Nguyen: Also, some of this the city has taken a support position and others we haven't, right?

>> Betsy Shotwell: Correct, they are under review now.

>> Councilmember Nguyen: I'm curious to learn more about AB 576. This is something we talked about at the mayor's gang prevention task force, we didn't go beyond because there were concerns raised in terms of if we impose a penalty or fine, on the juvenile delinquent under the age of 18, we are essentially imposing a burden on some of the families. But this one, I feel comfortable you know with AB 576 isn't it an opportunity for us to come back and take it either support or oppose position to this bill and if there is, when would that come back to us?

>> Betsy Shotwell: Well, it would be referred out with analysis and comment by the relevant departments, reviewed by the city attorney's office and then to the Rules Committee. So this could be another one we can emphasize for review.

>> Councilmember Constant: Can I jump in?

>> Councilmember Nguyen: Sure.

>> Councilmember Constant: In that avenue, what is the best way for us? Should we individually contact you with the ones we feel should be monitored, referred back to either here or Rules, or should we discuss that here at the next meeting or what's most comfortable for you?

>> Betsy Shotwell: Well, the more information that can be out there for the community to be aware of, in here, and in the departments, the better it is as far as again the communication. I mean obviously as soon as I get calls from people who said, "I heard about a bill on the radio today and can you look at it," that's one thing. If there is a particular bill you want me to focus on, however you wish. Chris, do you have any ideas, other ways of communication? But normally, the councilmember makes the request at Rules in a paragraph indicating they have an interest in this, and --

>> Don't mean to be overly bureaucratic but yes, that would typically be the way that it's done.

>> Councilmember Constant: I think there's a lot of good public safety ones that need some examination. I think there's not all the ones I think that are important to the city are in the summary. I think there are some others. So I'll just go ahead and work it through that process and discuss it with you.

>> Betsy Shotwell: Excellent.

>> Excuse me. I would also say that you have given us direction here in committee to look at the other two bills. So we will do that.

>> Betsy Shotwell: Right.

>> Councilmember Constant: If I can throw one more if, the speed limit one, the prima facie speed limit one, I think that's a tool that would benefit our city.

>> Betsy Shotwell: Okay.

>> Councilmember Nguyen: Anything else?

>> Councilmember Constant: I'll make the motion with the recommendation we discussed.

>> Councilmember Nguyen: We have a motion and second. All in favor? Opposed? None, motion carries. Thank you. We'll move down to 3.5, status report on customer contact center.

>> Good afternoon chairperson Nguyen, Steve Ferguson chief information officer. Desiree had a couple of items she wanted to highlight for you and then we'll take your questions.

>> Good afternoon, Madam Chair, members of the committee. And I just would like, as Steve said, I want to highlight a couple of things that you've already noted in the memo. We've recently made some improvements to the web self-service and online bill pay. And that includes creating e-mail notifications about new bills, account setups, credit card expirations, as well as getting notification on e-mail returns. And we are currently in the process of updating our FAQs for the web self-service. One trend that we've seen in the past year is the increase in property foreclosures and that causes a delay in billing, in utility billing because we have to research county records to notify the responsible parties. And in March there were 12 to 1400 annexations from county services to city services. And let's see, upcoming activity in the call center includes drought preparation because of the Santa Clara Valley water district's 15% water reduction. Their recommendation for that. And regarding the current budget, we plan to reach out to

other city departments to gather information about possible service reductions. So we can prepare to give that information to the public. So with that, I'll be happy to answer any questions.

>> Councilmember Nguyen: Councilmember Constant.

>> Councilmember Constant: I just wanted to express my concern about the corporate directory dialer. And while I know I have a tendency to both rumble and ramble on and on, I have a tendency to use that one,.

>> I have that same problem.

>> Councilmember Constant: I don't have a heavy accent and try hard to pronounce things correctly, but I can never get through. I hear that from my constituency and I use the voice activated direction on many other company, corporate and things I never have a problem. And it concerns me. I know that we have some -- we've made some progress, we've identified some other things to do. But it just seems that the vendor really should have an answer for this for us. Because this is, I think we're atypical, when I see compared to what's going on out there. So I just like to hear more about what we can do to get this corrected.

>> Want to answer from a technical standpoint?

>> Sure. Vijay Sammetta, director of I.T. The technology in place, there is a process for us to tweak the technology and things like that. There's two parts, how you're saying it and you're right, you have a pretty vanilla accent, you'll forgive me for saying that. And the other is the speech engine, how it interprets how a first or last name is supposed to be pronounced. You could be saying it absolutely correctly but the way the speech engine is interpreting it differently from our directory. We've put in a process where we get this type of information we can phonetically for lack of a better term the low-tech hooked on phonics version of telling this speech engine how this should be pronounced. For example, Patty Degnan came up. How would we spell that? It would be D-a-y-g-e-n. We have to phonetically put it out there, so the speech engine is able to understand it from a phonetics standpoint. We got a couple very recently and we're going through and tweaking the dictation. We did with the previous councilmembers, we went through all the Sr. staff and made sure that that dictation worked. I think we need to do that one more time since we've had a change in councilmembers since we first implemented the system which we can definitely do.

>> Councilmember Constant: I think it goes a little beyond that. I had my wife's phone. I switched phones accident one morning, and I didn't have all the numbers in it. I tried to say City Clerk. There aren't a whole lot of ways to say City Clerk, and it didn't go through. I think it's beyond phonics. I think there's a problem with the system. I think other people have addressed it. I think it's a vendor issue. I don't think it's anything that I.T. is doing or not doing. I think we need to push on our vendor to get that fixed.

>> We can speak to the vendor.

>> Councilmember Constant: Thanks.

>> Councilmember Nguyen: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you for the web self service. How many people use the web self service?

>> For online bill pay, we're seeing approximately between 12 and 13,000 residents use the online bill pay in one way, shape or form. And according to our vendor, that's a pretty high percentage. I mean, it didn't seem high comparatively when you look at how many people we actually bill but they say that it's a pretty high percentage. And as far as just general e-mails and web self-service requests that come in, we're seeing about 15,000 requests a year. And that represents about a 38% increase from the first year when we started using it to now.

>> Councilmember Oliverio: And then what percentage is it of total accounts you bill? Like 10%?

>> 220,000.

>> Councilmember Oliverio: So there's 220,000 accounts. You have 12 to 13 thousand?

>> Yes.

>> Councilmember Oliverio: Okay being I can do that. Thank you.

>> Motion to accept the report.

>> Second.

>> Councilmember Nguyen: We have a motion and second to accept the report. All in favor, opposed, hearing none, thank you. We'll move down to item 3.6, the semi annual recommendation follow-up report for all outstanding audits, recommendation for six months ended December 31st, 2008.

>> Sharon Erickson: Thank you very much. Sharon Erickson City Auditor. During this period there were 110 open audit recommendations, 47 were outstanding from the prior report. 63 were brand-new. Of

those 35 recommendations were implemented. 51 were partly implemented. Only 17 not implemented. One is still deferred, six recommendations we are asking they be dropped. I'll go through those very briefly. First I wanted to say table 1 we list the oldest to the newest audit recommendations and I always try and go after the oldest one. This year the oldest one was from 1997 regarding database cleanup procedures, and we are done!

>> Councilmember Constant: Yea!

>> Sharon Erickson: The second oldest is a building recommendation regarding capital costs, capturing capital costs for their billing rates so that's going to be the next one that I'm going to start to work on. Then I wanted to point out that on our audit of the bond program, we have made significant progress there, so even though only two of the recommendations are showing as implemented, eight are in process, one other has been implemented since we issued this report with the issuance of the audit of measures O, P and S which by the way I keep telling folks show that we were in compliance with the voter language that the language in the ballot measures that the voters approved. And then also I wanted to point out the audit of retirement services travel. We are making also significant progress in that area. These recommendations are completely implemented. Nine are partly about implemented. A number of those we're actually waiting for the boards to be fully occupied, how do I say that so that we have all of the positions filled on the boards, the boards were also waiting for the city to update its travel policy. That's now done. So these will soon be implemented, I hope. I also wanted to let you know that we went back in in February, and did a file review, and for example, where we found that files weren't complete, we are finding that files are complete. The boards are exercising more prudence in travel. So I am very pleased with the progress in that area. And then finally on the City's oversight for community based organizations, the grants manual is complete. The list of grants is complete. And there will be a draft review, so the recommendation where we recommended an annual report on the status of CBOs, that will be coming out in a few weeks. If I could just very briefly, I wanted to, in the overview, we also point out those recommendations that have potential budget implications. I want to say there are no silver bullets in any of that. There is some long term possibilities. We have forwarded those to the budget office for consideration as part of the budget review. And we'll be reporting back to you on that as part of budget. Finally, there are a few recommendations we're recommending to be dropped, and I just wanted to point those out. In the audit of Team San José, we had recommended a nationwide search with consolidation of the two organizations. We no longer feel that's necessary so we're recommending that be dropped. There were six -- I'm sorry, five recommendations from the ECSS fee audit that with the approval of measure J are no longer necessary and we're recommending those be dropped. Before I close I just want to thank all the departments and the City Manager's office and my staff for their diligence in following up on all these recommendations, and to staff for implementing the recommendations that we're signing off on today, and for their help in making the city a better and safer place. Thank you.

>> Councilmember Nguyen: Thank you, Sharon. Are there questions from community members? Councilmember Oliverio.

>> Councilmember Oliverio: Actually, it's to the manager's office. In listening to Sharon Erickson's mentioning of the audit on retirement travel. I remember I brought a memo forward to the Rules, to the City Manager to ask if they be considered using the policy of using web based travel versus getting on a plane and I haven't heard back.

>> I think that's a part of the new travel policy. Could you help clarify that, in adopting the ideas that the board is going to adopt, I don't know if you already have, the City's travel policy and that is correct, I believe, Scott?

>> Scott Johnson: That's correct. That staff is encouraged to look at that as an option when available. As a means of getting the information when there's training or any exchange of information, that they do it through web base rather than traveling to go layer the information.

>> Councilmember Oliverio: Okay.

>> And we could also -- when it comes before the board once again I'm not sure whether or not you've adopted it the new one.

>> Councilmember Constant: I can update you. On the federated side there's a policy meeting on the 30th, where a final review will be taking place. My understanding, based on our previous meeting there were, sense, on how it affected the retirement board. I think all of those have been addressed by finance. I don't think there's issues outstanding. I expect it's going to go through rather smoothly. In the area of the web based training, I have been monitoring all the different groups that provide the training in the retirement board and I'm pleasantly surprised, more and more are offering web based training. Some

of the stuff like the initial fiduciary training still is not available. They are ones where they pretty much require the on-site attendance. But what I'm noticing is the annual refreshers, the new law updates, I'm seeing more and more of those available online. I am sure we'll see a progression of that moving forward.

>> Councilmember Oliverio: You're telling me that will be adopted as part of the citywide for all employees?

>> Yes, absolutely. The idea was that the boards were then going to use the same policy.

>> Councilmember Oliverio: Okay.

>> As the city, so --

>> Councilmember Oliverio: Great, thank you very much.

>> Councilmember Constant: One of the things before, each of the boards had a travel policy, the council had a policy and the city had a travel policy. By the time we review these we'll be down to two, which is the city overall policy and other restricted items for our policy. So is the motion to accept or to refer to council, the ones that you want dropped? I think it's to move them forward to council to be dropped, correct?

>> Sharon Erickson: I had assumed it was to accept but I think we need to move them forward to council for adoption.

>> Councilmember Constant: I'll second that.

>> Councilmember Nguyen: Okay. It's not me I'm behaving. Not texting today.

>> Councilmember Nguyen: We have a motion and second to accept and cross reference for council consideration. All in favor, opposed, motion carries. I'm sorry, does anyone in the audience wish to speak on this item? Little bit too late but -- okay, thank you Sharon. We'll move down to item 3.7, and audit of the City of San José workers compensation program.

>> Sharon Erickson: You have before you an audit of the workers compensation program, Sharon Erickson again, City Auditor. We have been auditing workers compensation for many years. I audited workers comp when I was here many years ago. It is a law that is broken in the state of California for a long time. The city like many other employers have an issue of workers compensation. We must remember the purpose of workers comp, to take care of any worker who is hurt on the job. As the costs escalate we want to make sure we are only paying the appropriate cost and no one is abusing the system. When we looked at it in the last year or so we find we are spending about \$24 million a year on workers comp. When we looked at it and we have graphs in the report starting on page 17, when we compared to other self-insured, self-administered plans, we have higher costs per clam, we've got a higher incident rate per employee, you can see those and the one that struck me was on page 18 where San José's three year loss rate per employee of \$2800 a year, compares to Santa Clara County at \$561 a year. Over the past five years, city staff has made a number of improvements to the system. The city has made a concerted effort, especially since 2004 to improve the program. City added staff to the workers compensation unit, implemented most of the recommendations, not audit, recommendations for the program that were done by various consultants. The city maintains a highly evolved safety program, has a return-to-work coordinator, has an updated database, and yet, and when we reviewed the files we found we confirmed that we've got timely delivery of services from claims adjustors, none the lest, the cost of workers compensation keeps going up. We looked at the graph of those costs. It's on page 22 of the report. That shows you the breakdown of between workers compensates -- the cost we normally think of as workers compensation cost, the medical, legal and indemnity cost, and then layered on top of that the disability leave cost. And this is where it raised concerns for us. So when you look at that graph, exhibit 9, you can see the cost of workers compensation last year was 15.3 million but whether we layer on almost 9 million for disability leave that's how we get to the 24 million. There's a high cost in various departments, but before I do that, you can see in the next few pages of the report, we've got a number of employees who are filing multiple claims. In fact on page 25, you can see that the maximum number of claims filed by one worker was 32, in the fire department we had somebody in the environmental services department who had filed 36 claims, and someone in the police department who had filed 42 claims. We also found that there is a tendency to file claims before retiring, leading to disability retirements. Whether we look at the disability leave earnings by department, you can see those on page 28. It was about, of the total 9 million, 4 million was in the police department, and 3.5 million was in the fire department. And if we translate that into hours, or into full time equivalents, that does not include modified duty, the police department had 94,000 hours, fire department had 95,000 hours. And you can see those numbers have jumped over the last few years. So in the 2006-2007, the fire department had 96,000 hours of disability

leave, last year I.T. was 95,000. On the other hand, we see other departments making progress. The publication department little further on the list go down to 1800 hours from 6,000 hours. It is not uniform across the city. So although the city has taken steps to moderate the escalation of cost, especially in the areas of medical indemnity and legal expense, we feel more action is needed to moderate the escalating cost of disability leave, particularly in the police and fire departments, because that's where the bulk of the cost is. Our first recommendation, and one action we feel the city needs to take, is to somehow revise the financial incentives to stay off of work. So our first recommendation is to propose structural changes. We said propose. We realize proposing may be as far as we get with this. But to propose changes which would include reducing the City's policy of providing nine months of disability pay supplement, and reducing the full year foster 100% for sworn employees. Those are both discretionary, at the City's discretion. And number 2, implementing a payment offset for sworn employees who receive a disability retirement that replicates the offset that's currently in place for retired nonsworn employees. Then we have a number of other -- so that's probably, quite honestly, the most controversial recommendation. The rest of our recommendations really focus on increasing the visibility of these costs. So asking the police chief and the fire chief to report back on why they think those costs are escalating, what we think can be done about that, increasing the visibility of these costs by reporting them back to the city council, by budgeting for them, in separate line items, and then also, making city departments who really do have good safety programs, as far as we can see, in place, but asking them to be more publicly accountable for safety goals, to make sure that we have not left any stone unturned when it comes to worker safety. To get back to the purpose of workers comp, it's to make sure that our employees are safe, they're taken care of if they're hurt. That's the ultimate goal. What we want to do is make sure there is no abuse of this system in San José. And with that, I'm happy to answer any questions. The administration's response is in yellow in the back. The administration does agree with the recommendation.

>> Councilmember Nguyen: Thank you, Sharon. Questions from committee members? Councilmember Constant.

>> Councilmember Constant: I have mostly comments and I've discussed this at length with Sharon and her staff. And I appreciate the depth of the audit. A lot of my concerns stem, as I shared with them, from personal experiences. You know, I got hurt severely as a city employee, was off and had seven operations and I'm going to have another one all related to an injury while working in the City of San José. Over the years I've seen improvements and some things are moving in the right direction. As far as how risk management operates, and how things get through the system, some of the things like allowing MRIs to be approved by an adjustor rather than going to utilization review, so you're not saving \$10,000 on an employee being off of work, rather than trying to save a 5 or \$6,000 procedure, that is beneficial, to both the city and the employee, so they can get their diagnostic review faster. But I think the utilization review still has problems. And there are areas where I still think we prolong things. And I'll give you a personal example because I'm going through it right now and I shared this with Sharon and while it's about my personal medical I don't mind sharing it with people. When you know an employee is going to have surgery and a doctor is requesting a diagnostic test to determine the extent of that surgery, you know have you to have it, otherwise the surgery could be more invasive and more expensive than it needs to be. And it ends up going through a process in my case that not only stretched it out a couple of weeks in the review process but then ended up putting it to where it ended up instead of me getting the test in two weeks, I have to wait four weeks beyond the two weeks and then missed a surgery window so it's going to be several weeks or months before I have this surgery. I'm at work. So it's not that big of an issue. But if I were an employee at home on disability, we would be taking two to three months of someone being home, getting paid disability time, while we're dealing with the -- with a procedure that is required to do surgery, and is only probably a three to \$5,000 test. I'm not sure exactly how expensive but not that exorbitant. We know the longer someone is waiting for tests, the longer it takes them to recover from surgery. I know it is a state guided process, but I don't think if it's in our own interest. I think the review works very well. Having the discussion and having doctors look at whether something is medically necessary, as far as when you're cutting someone open, at make serious surgery, I think that's valuable. But are we still missing, saving a dollar here but costing us \$40 here? That concerns me. I think an area we really need to look at is what's contributing to the injuries? And of course that's not the scope of this audit but I think it is something we need to look at. For example, if 50% of the employees are getting hurt, are getting hurt while they're on overtime, that's something we need to know. If it's when we're sending out our patrol teams on minimum staffing or below minimum staffing, because we don't have police officers and those are the dates they're getting hurt, that is something we need to

know. Because that is something we can look at and say, we can make changes in the workplace to make our employees safer, and by the way, we're going to save money. The money part when it comes to the health and welfare of the individual employee in my mind is second. But making sure, they don't get hurt. If it's happening on overtime or other specific things that are hang on those workplace safety audits I think those are things that we need to be looking at. And I'm really concerned and I've expressed this before with the workmen's comp offset. On paper it shows that you will save money. But in reality, I can tell you I don't think it will work. Because someone could, the way an offset works, if I'm understanding it correctly which I believe I am some, is if you're retired and getting a workmen's comp settlement, whether it be a lump sum payment or you're over 70% or 65% you get that annual monthly payment for life you offset the workmen's comp. But if you get those settlements prior to retirement there's no offset. So I believe what you're going to end up having is people staying -- people who are severely injured staying at work so that their offset doesn't occur, because of a timing issue. And you may just shift the problem from here to here, and workmen's comp numbers or retirement numbers may go down but other numbers may go down. Looking at that time line is important and how that actually works. I think the equivalent of the 4850 time, the full pay while someone's not at work on disability, I think reducing that is going to have a significant detrimental effect to employees. I know when you have people-you have two categories of people. Have you people who get hurt, and you have people who get seriously injured. And when you have someone who's going to be out for a year, there are a lot of other impacts that person has on them besides just their paycheck. And the personal impacts, sometimes outside employment impacts, extra cost that you're incurred because you're injured, things like that, that we may be doing ourselves a large disservice to our employees. And not have a big fiscal impact by reducing that time. And I think the 4850 section that's for Cal PERS and related people is there for a reason. And I again make these comments because I have a lot of personal experience of being an employee, being injured, having a long term injury, working in the system, and seeing when it doesn't work, working in the system and seeing when it's working better, and still fighting the system 12 years after I got hurt. So I think we owe it to our employees to be very cautious in this area and that we should be putting efforts on really finding out what's causing the injuries. There's some injuries you're never going to be able to avoid but we may find trends as I mentioned that are related to number of hours worked, overtime, specific work conditions, that we as employers do have control over. And those are the areas that I would like to see us put effort. And then of course, there's always people who gain the system. And I don't want to see us short change people who are seriously and genuinely hurt working for the citizens of San José, impacted negatively because of a few who gain the system. In my mind we should concentrate our efforts on those people, and we have a policy where if you obey the system, you are taken care of. But thank you for all your work. I agree with a lot of what's in here, just a few things I don't.

>> Excuse me, Madam Chair. John Dahm has a few comments if that's all right with you.

>> Councilmember Nguyen: Yes, absolutely.

>> Thank you, Madam Chair, Councilmember Oliverio, Councilmember Constant. I have three topics, one, you are, second is cost of injury, what have we done, what are we going to do about those. And the last one is the worker comp offset. With regard to the offset, we do this not because it is mandated by the state. We do this because of the interest of the employee. For example, we often hear that why don't you authorize surgery for employees, when it is needed? For example, why don't we authorize surgery on both arms or legs? So that employee will come back to work sooner. In our consultation with Dr. Daws, he says that most doctors do not operate on both arms and both legs rather than being totally disabled. It is in the interest of the employee that they are able to take care of themselves at least partly. That issue the city will save money by authorizing surgery attempt. But that is not in the interest of the worker. Our program, what I seen in the past is back to back surgery. On the same location. Because a lot of time we were powerless to appeal those decisions. So we had to abide by the treating physician. And in our experience, the treating physician not all the time had the best interest of the employee. Some of them are there to have other purposes. So the city would like to get the employee and that is what our program is about, in terms of timing we work very closely with our vendor to make sure that we not only meet but exceed the state law. So over 84% is approved within five days. Anything not in that five days, can call us directly and say, why haven't you approved that, and we'll get back to the employee immediately. We don't usually get calls like that because 84 per are usually approved within five days. The treating physician has not set in the necessary information for our review package to make a decision so we ask for this information. If your permission is there 99% of the time it's within five days. So it is incumbent upon the treating physician to send us the information. If we don't get it, we ask for it. So we have it 99%

of the time it's in five days. Right now because we don't get all of it 84% it's within five days. So that is our new program. The second topic is injury and what we're doing about them. We are doing quite a bit. The last survey we did we looked at cause of injury in fire and police. For example fire department we found a third of the injuries happened at the fire station. So what we've done since then, we ask officers to identify conditions, dangerous place to work. We also look at the widest program of firefighters and police, so would reduce the rate of injuries, we are working with the police department, to introduce us to this program and that's the recommendation that Sam has made in her department as well so we'll continue to do that. The last one is, worker comp offset. The timing works like this. Whenever an employee is required on disability and he or she get worker comp benefits, the benefit is offset, not a dollar by dollar but 70% of it. For example if I retire I get \$1,000 a month in my pension. On top of that I get \$1,000 in workers comp benefits. The offset now is 70% of my final dollars will be deducted from my 1,000. So I get \$650 on my pension, \$500 from my worker comp. So the total is 1150. Still more than my pension. But the offset will occur when the employee will retire. So the timing is very clear, there is no fuzzy way when it happens. It happens when you retire and you receive both. This only happen for a nonforce 1 employee. Force 1 they get both.

>> Councilmember Constant: I have no doubt that utilization reviews happen timely. My concern is utilization review denials that ultimately become approved. I've had a dozen or so denials, every single one got approved after a period of time. It is only two of those that the doctors didn't have. It is very troubling to know that a doctor who has never seen me makes a determination on whether I get a procedure or not. It's much more prudent for us to look at a second opinion, where there's a face to face with a doctor because a lot of medical decisions are not just based on what you have on paper. Especially in complex injuries. I spoke at length with Sharon about how we figure out, how many of those denials ultimately become approved. And I bet you that it's a very significantly high percentage. And I've talked to my doctors and I've talked to my friends' doctors about this and almost all of them that I've seen get ultimately approved. So we're taking time to go through an expensive utilization review process, to ultimately approve what could have been approved earlier. And when it comes down to making a decision, I know my body and my doctor knows my body far better than somebody signature at Mitchell at some other state looking at a piece of paper. And that's what's happening. I think that's very important. If a doctor tells a doctor who tells a patient very well says I think you need to have these two procedures simultaneously, I think that relationship is much more important than a relationship that does not exist between a doctor sitting behind a desk looking at a piece of paper. Even looking at MRIs, they are getting my decision absent those MRIs. They are looking at a report that summarizes a condition that's read by a radiologist, not a neurosurgeon, therefore you need a diskogram and that's what I'm looking for, you have a doctor sitting behind the desk saying no, we don't need to do that. My doctor calls them and they talk and after another week those get approved. Those are the issues that I'm worried about. I still think that in the area of looking at work place safety they are have not yet looked at when they occur, in addition to how they occur. Do they occur on overtime? Do we have a firefighter who worked a full 24 hour shift, did a 24 hour overtime shift and then on his next 24 hour shift was injured? To me that's data that we should have. It was more important than he was in the kitchen and cut his finger with a knife. We know what fatigue does to people or working long hours does to people. If an officers went to court, next day, night before worked all night, came home on midnight shift and got hurt, that's more important than how he got hurt and those are the timing issues that I think we need to look at. And finally on the workmen's comp offset, I understand when it works but I think it louse workmen's compensation, stake on modified duty so that offset doesn't occur. And it also leads to negotiations, like what happened in my case, where all the doctors agreed that I should be a 70% disability rating which would have got a lifetime pension. But we end up negotiating with city attorney's to pay out a higher payment, but give me a 65 so it doesn't get a lifetime pension. You start getting those manipulations so I should have gotten a larger disability than I circulate have at 68.5% but didn't get disability. It's like buying it out. I think you're going to see more of that manipulation that's going to happen, you're going to see people, you're going to have more than the number of people on modified duty, younger officers getting bumped off because of the decree that says somebody's got to retire. There's all these things and just not wrapped up in easy numbers. Those are the areas where I really want to make sure we look at it and that we're making sure that what we're doing is first in the best interest of the employee, aggressively going after fraudulent activity so those who make it tough for those who are really injured are dealt with and then looking at overall cost. So that's it, thanks. Other than that, I have nothing to say. [Laughter]

>> Councilmember Nguyen: Councilmember Oliverio.

>> Councilmember Oliverio: First of all, I hope we're all happy for our health. Extremely helpful, on the audit and the comments by Councilmember Constant, and the UR process, that would appear to me if there is a flaw in the system because of a doctor in a remote area that doesn't have a personal relationship with the patient, that's just the system itself of how we do health care in the United States or am I incorrect there? Does how we do this UR process is that different than how they do it in City of Santa Clara, Sunnyvale, anywhere else?

>> It is the same process in most city. We are fortunate we have a doctor on staff, and UR guidelines developed under his guidance. Just to any city we could compare San José to in California.

>> Councilmember Oliverio: Okay. Then on the next question for the auditor, which is the correct terminology on the leave when a person is out for a year, is there bargaining rights on what that person request or cannot do? Let's say you're out for eight months, nine months, you may not be 100% of your job capability. But for example if you are a police officer you could teach a neighborhood watch class in the neighborhood in the City of San José, or emergency preparedness in a class, something that doesn't require full duty. Is that possible under the resumes or --

>> Sharon Erickson: I'm looking to Ellen Demears, return to work coordinator. Yes, so for the police and fire department, although for all the city, if somebody has temporary work restrictions that would allow them to return and perform some functions for the city, the city offers temporary modified duty to get those employees back to work. For the police and fire department specifically they operate their own department-specific programs but they are very good at offering temporary modified duty to return those folks in a capacity where they wouldn't be able to do safety-sensitive duties. For the rest of the city we offer a central return to work program where we offer citywide temporary modified duty while those people are clarifying.

>> Councilmember Oliverio: Just to clarify again, we already have that in place today where somebody who is on disability leave in a capability can come back and do some kind of work?

>> That's correct.

>> Councilmember Oliverio: And obviously receive the disability fee during that time. Which is 100%. Are you the one that calls people to come back to work?

>> I contact employees for the nonsworn system. In the police and fire they do operate their own temporary duty programs so they could contact their people privately.

>> Councilmember Oliverio: If it is a sergeant or lieutenant?

>> I think they have people at the Sr. analyst level or something like that.

>> Councilmember Oliverio: Okay. And then another question, I'm curious now, you said for fire most of the injuries occurred at the station?

>> What I said is that about 30% of the injuries happened at fire stations.

>> Councilmember Oliverio: Okay at the field.

>> On the -- outside the firehouse grounds. Straining lifting, things they usually do and Washington fire fire apparatus pulls in hoses.

>> Councilmember Nguyen: I'm very glad to see that staff agree with all the recommendations. Not so much whether or not we're going to implement the proposed recommendations but it gives us an opportunity to explore and improve our ways for the plan. In essence, it's nice to see that that's the direct that we're going. I just have a really brief question. On page 32 it talks about a factor that contributes to the higher workers compensation claims. And one of the factors it talks about is physicians allow workers with minor injuries to stay off work longer. When an employee encounter a minor injury, do our city doctors look at that first or do they go out to their own doctors and they make that own recommendation?

>> They do go out to their own doctor.

>> Councilmember Nguyen: In this case, how do we remedy that, do we get a second opinion?

>> What we can do is ask for a second opinion, call it qualified medical examiner.

>> Councilmember Nguyen: I hope this is something we start looking at, as we move forward.

>> Yes.

>> Councilmember Nguyen: Is there anyone else who would like to talk on in project?

>> Councilmember Constant: It is really not discussed in any of the recommendations of modeling after. Is there a particular reason you feel that would or would not work especially in our public safety areas?

>> Sharon Erickson: You know what happened in Sunnyvale at least our understanding of what that story as it's been passed down, is there's a real cowl shift. So the recommendation we made that sort of does apply was recommendation number 3, that the police and fire chief look at risk management, for the

bottom line of what they think are some of the issues in their department and address exactly the kind of issues you raised. It's a big deal in terms of staffing of those departments, I forgot to mention, the equivalent of 45 FTE in those departments, at a time when we're not able to fill. Modified duty at least 30 in the police department. So it is a very important issue for the police chief and the fire chief and I know they can get to it. To the extent they can deal with the cultural issues that are here of potentially excessive claiming, at the same time protecting the lives of folks that are legitimately hurt on the job.

>> Councilmember Constant: I think that's a good point and I would urge both chiefs to really look at the Sunnyvale model. The cultural change I think did change. The foot soldier feels they did get a bad shake. As an employee of ten years ago, the minute you get hurt you better get an attorney or you're not going to get taken care of. That's the perception of the rank and file. I remember getting hurt and getting a from my workers compensation worker, who says I just read your report, you better go call an attorney. That system goes deep, if every person needs an attorney to get dealt with properly, the culture needs to get fixed. I would suggest we work on that. I'll talk to you about this ad nauseam if you want to talk about it because I think it's really important.

>> Sharon Erickson: Madam Chair, my Office understands that this is just one of a series of reports. We look forward to working with staff if they can use some of the work done previously or if they need additional assistance in working these issues through. I did really want to thank the staff in risk management and HR in the City Manager's office, the police department, fire department and my staff, Robin Opime, and Steve Hendrickson who shepherded this through. It is just one step in a long process.

>> Councilmember Constant: I'd like to make the motion to accept with the comments that my comments are not critical of the audit, as you know from our one on one. But those who are listening may interpret it of being critical of the audit. It is critical of the process and the culture and something I think we need to address but I think the audit is well done.

>> Second.

>> Councilmember Nguyen: We have a motion and second. Yes, okay. We have a motion and second to accept the report. Cross reference for full council consideration. All in favor, opposed, hearing none, motion passes. Down to the open forum. Do we have anyone on the audience who wishes to address anything not on the agenda today? Then we are adjourned, thank you.