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

>> Mayor Reed: (gavel strike) Good afternoon. I'd like to call the San José city council meeting to order for October 19th, 2010. Vice Mayor Chirco will introduce the invocator.

>> Councilmember Chirco: Thank you very much. I would like to welcome Fresh Lifelines for Youth, or commonly known as FLY, to present our invocation this afternoon. Since 1998, Fresh Lifelines for Youth helps teens in trouble learn to make healthy decisions. The organization provides at risk and disadvantaged youth with vital information regarding the decisions they make in their lives. They provide well trained mentors who listen, and FLY gives its graduates the opportunity to advance to a leadership program where they use their knowledge and skills to give back to the communities. One of FLY's programs a year long one has a striking 85% success rate. All at 1/10th of the cost of incarceration. They have much to teach us. National research shows that kids exposed to legal education are less likely to break the law and at FLY they find that when youth know better, they do better, as examples the three delightful young people in front of us. Additionally. FLY has found that by adding positive adult role models and intensive case management youth are more likely to make positive long term changes. Another reason FLY programs have proved so successful is that the programs were designed by the incarcerated youth. FLY continuously improves its program the law programs teach at-risk youth about the law and consequences of crime, the mentoring program provides positive role models for youth and helps them to make healthy decisions and overcome addictions. The leadership training program is a year long program in which FLY law and mentor program graduates design and complete community services projects while working with a case manager. And in 2001, FLY was honored with the -- this is not written the right so I'm going to wing it here. With the San José first ever human rights award. They are recipients of the Healthy Neighborhood Venture Fund and a member of the mayor's gang task force. Today we have three successful young people, José, Marian and JÈsus, as well as staff members Able, Aby, leadership role manager and Rehena, leadership case manager. Thank you so much for sharing with us this afternoon.

>> Hi, how you guys doing? My name is José Cuevos, I've been with FLY leadership program for three years now. Here's one of my pieces. We all go through struggle that makes us suffer. We all go through some pain. That leads us walking towards the rain. An effort to make a change, a trouble-minded child trying to break the family chain. Thank you.

>> My name is Marian Cortez, and I've been with the FLY leadership program for a couple of months now. And the poem that I'm going to read is a poem that I wrote when I was going through a lot. Lord, please help me with my struggles. Help me out of this bubble. I try hard to stay humble. But I always seem to tumble. I wish I could sit back and watch my problems crumble. It's like a football game when a guy makes a fumble. I always feel like I'm on the run because I got in trouble. I'm sick of this pain, I'm sick of this shame, not even worried about the fame. I'm sick of my dad because he went in cane. Forget this world, it's full of rain. I'm sick of this anger. I'm going to go insane. I hate to popping pills to try to relax my mind. It is the lord that I must find. I am no longer kind. I'm hurting inside. The clock is ticking. I'm running out of time. I live each day like it's my last. I'm tired of putting on this mask. I hate not being on task. My life's real. No joke's on that. Everything I say are nothing but facts. All I want to do is get my life on track. But it's not going to help by smoking this stack. Thank you.

>> Hi, how you doing, I'm JÈsus. I've been with FLY for about three of years, been with the peer leadership for about a couple of months. This piece I'm going to read is called me. [Spanish] This life as we know will teach us that we judge by the naked eye. When you see me what did you think? Was it like the rest, did you see me as a black seed or the gorgeous rose? Did you look at the surface or did you dive deep into the Pacific ocean I call my soul? My demeanor is strong and solid, my eyes are sharp like a sword. My fists are rocks and my smile will bring bliss. My corazon, my heart, will attract the love that will be cherished and protected. That's it. [applause]

>> Mayor Reed: Thank you for joining us today. All stand for the pledge of allegiance. [pledge of allegiance]

>> Mayor Reed: First item of business are the orders of the day. Any changes to the agenda order from the printed agenda, I have one change, the adjournment in memory of Penelope Pries will be deferred to November 9th. Any other changes on orders of the day? Motion to approve the orders of the day. By Councilmember Constant, seconded by Councilmember Pyle. Awful, opposed, none opposed, those are approved. Closed session report, City Attorney.

>> City Attorney Doyle: Mr. Mayor the council met in closed session this morning pursuant to notice. We have one thing to report out. We were given authority to initiate litigation in one matter. The name of the action and the Defendants as well as the substance of the litigation will be revealed upon inquiry once the action is commenced.

>> Mayor Reed: I'll take up the ceremonial items. Like to start by inviting Councilmember Kalra, Guy Washington, Ellen Rollins, William Kendricks and Leon Beechman to join me at the podium. Today we're recognizing the month of October 2010 as underground railroad awareness month in the City of San José. Councilmember Kalra has the details.

>> Councilmember Kalra: Thank you, mayor. It's certainly a privilege for me to take a moment to recognize a very important part of American history by having a proclamation presented today recognizing October as underground railroad awareness month. The underground railroad was a vast network of people who helped fugitive slaves escape to the north and to Canada beginning in the end of the 18th Century. This network was able to assist hundreds if not thousands of slaves escape captivity each year. Some estimates state that with the critical assistance of the underground railroad 100,000 slaves escaped the South between 1810 and 1850. The underground railroad had many notable participants such as Harriet Tubman, who made 19 trips to the South and escorted more than 300 slaves to freedom, and abolitionist John Brown who in 1859 led the famous raid on Harper's Ferry. Today I'm proud, along with the mayor and council, to recognize the underground railroad and the efforts of those who are determined to educate the public about the significance of the underground railroad in our nation's history. Including national underground railroad network to freedom national park service, Ellen Rollins, the curator of the African American Heritage House, history park San José, Mr. William Kendricks, the president of the National Forum of Black Public Administrators of Silicon Valley, Hillel Mayer, the Director of Community Arts and History, Leon Beechman, I'm glad he was able to join us today, the president of the Santa Clara County Black Educators, and the trustee on county board of education, and of course former councilmember Forrest Williams as well. And I would like at this time to ask the mayor the present the proclamation to Mr. Beechman along with Mr. Kendricks and Guy Washington.

>> Good afternoon. Mr. Mayor Reed, Councilmember Kalra, entire city council, we'd like to thank you so much for honoring and recognizing this very, very legitimate, important piece of our history. You see me all the time around the streets. But I'm so privileged to be able to present to you someone who can speak more forthrightly, and Nationally, regarding this great day we're commemorating. I will call up Mr. Guy Washington who is the head of the national underground railroad network to freedom. Mr. Washington.

>> Thank you. Thank you very much. Thank you, Mayor Reed, thank you, councilmembers and thank you, friends old and new. It's an honor to be here to represent the national park service today for the last 12 years the national park service has spearheaded an effort throughout the country to recognize the importance of the underground railroad movement as one of our foundations for our modern civil rights and human rights movements, indeed. We recognize the importance of this day, and this event, and this is, I have to say, our first, for the network to freedom, the first recognition by a city in the whole United States of America. So I thank you. [applause] So San José is once again out in front. As is Santa Clara County, the first to issue a county wide proclamation. It's a great honor. The history of the underground railroad movement we've talked about briefly here, involves Harriet Tubman, involves a national movement but it also has a very important local component. Many of us do not know that during the California gold rush hundreds and indeed thousands of enslaved African Americans were brought to California to labor for the benefit of others. California entered the union as a free state in 1850, the 31st state. However, the status of these enslaved people was often left unclear. And it was left to individuals, citizens of our state, and of our country, who put moral law above our political law, and made efforts to achieve freedom for people. Here in your community, reverend Peter Casey was a leader in such a movement. Peter Casey began the first African American church in San José. Peter Casey began the first colored school in San José and the first colored school in the whole state of California was begun right here in San José in the 1850s. And Reverend Casey and others of this community were involved in rescuing a couple, Mr. and Mrs. Williams, in the mid 1850s. So there is indeed evidence to our local connections to this historical movement, and I would point out to you a reminder that the foundation of the underground railroad movement is important for us to study today as we face our own human rights problems, we look to the example of historical figures, and they have lit the way for us. It is imperative to us to move forward, and work towards achievement of freedom and justice for all peoples. Thank you. [applause]

>> Mayor Reed: One more picture. I'd like to invite Councilmember Nguyen and sister Miriam Daniel Fahey to join me at the podium. Today we are commending Sister Miriam Daniel Fahey for her tireless dedication, leadership, and invaluable service improving the quality of life for the residents of the Santee community in council District 7. Councilmember Nguyen has more details.

>> Councilmember Nguyen: Thank you, Mayor Reed, good afternoon everyone. I'm so honored to introduce to you a champion of working families, sister Miriam Daniel Fahey. I have had the privilege of knowing and working with Sister Miriam since I first got elected to the San Jose city council five years ago. For over 14 years Sister Miriam served as an advocate for the Santee community, where she and three other nuns ran a small library and literacy program. She is a force to be reckoned with in our community and is someone you would always want on your side. Many of us here are familiar with the Santee neighborhood. This area was once a site invaded with crime, drugs, and gangs. This predominantly immigrant community did not have a voice to stand up against the drugs and crime that surrounded them. Through Sister Miriam's tireless work, she slowly transformed a community that has constantly lived in fear into a vibrant neighborhood with community members interacting and working with one another to create the safer and more secure neighborhood for its residents to live. Sister Miriam's tenacity became something of an urban legend throughout the years, becoming known in the community as the nun who is running off drug dealers. In addition to her advocacy in the community she also conducted moral training classes that served over 50 youth per year providing them with valuable lessons and preparing them for a better future on behalf of the residents in the Santee area I would like to say thank you very much to Sister Miriam for your tireless dedication, leadership to and invaluable service to improving the quality of life for residents in Santee as well as the City of San José. I would like to ask Mayor Reed to present the commendation to sister Miriam.

>> Well, mayor Chuck Reed and members of the council, especially Madison, from District 7, my colleague of many years, from pact, Judy Chirco, and a friend of District 7, Pete Constant and all of the other members of the council and those of you who are here today I appreciate very much having received this, but really, I didn't do this work alone. I came after three of our sisters settled in Santee. Just to be a presence to the people there. But

they got into the neighborhood activities, and so when I came, there was nothing else that I could do but to do the same thing. But I -- I guess maybe I can say that I did a little bit more than that. I became the officer of the local neighborhood society group. And then after that, with Snack and NAC and then even PAC, and so it gave me an opportunity to see what the City of San José was doing, and it certainly is a tremendous city. I would like to mention a couple of people from the city staff that I have known throughout the years who were very influential in improving the situations of Santee. The first person that I met was Art Nino. Many of you may know him, he's still the leader in the community center on Alma and Cervando Perez, the two of them were wonderful in walk around the neighborhood. I made the trio, we would walk around the neighborhood to see what needed to be done. I would also like to mention the police department of San José. We had tremendous presence in that area at the time of the -- well, the landlords who had neglected the four-plexes and the drug dealing that was going on, the graffiti. And the police department along with a friends of mine by the name Paul panaghetti who was very instrumental in getting rid of much of the gang and the drug sales that were going on there. So it has been a great pleasure for me, a wonderful experience after my 50 years of teaching to come to San José and do 14 years of work among the people. The people of San José, who are less fortunate than we are. So I really am very grateful for the opportunity and I hope that many of you will continue and inspire other people to do that. Thank you very much. [applause]

>> Mayor Reed: I'd like to invite Councilmember Constant and Robert Sapien to join me at the podium as we recognize the week of October 17th through 23, 2010 as national save for retirement week. Councilmember Constant has some details.

>> Councilmember Constant: Thank you mayor. So Robert's here. He's the chair ever our deferred compensation advisory committee. And that's how we selected him of all the employees to be here. Because the City of San José recognizes how important saving for retirement is. Since 2006, Congress has approved resolutions designating the third week of October as national save for retirement week. The hope is to increase personal financial literacy and raise public awareness of the retirement savings vehicles available to all workers. With longer life expectancies and rising health care costs, it's critical that Americans understand the importance of greater savings and plan ahead. We know that our country, as a whole, has a lower rate of savings

than many other countries. In fact, more than half of all workers in the U.S. have less than $25,000 in total investments. And that's why we really have to remind people that investing is not just for the economic times like what we've been going through and to have a cushion but it's also for your economic future into retirement. Many employees have access to defined contribution plans or some form of tax advantage plans that are available to them. But many are not aware of the plans to the full extent that they can be using them and lack education regarding the process of saving for retirement. National save for retirement week is an opportunity to reflect on personal finances and consider whether financial goals for the future can and will be met upon retirement, giving all workers a chance to increase their awareness of the need to save for retirement. So mayor if you could present Robert with the proclamation.

>> Thank you very much, mayor, Councilmember Constant and continual, in declaring this national save for retirement week in San José. While I'm here to talk about that issue, I'd like to take the opportunity to talk about the other 51 weeks of the year and acknowledge Jeannie Groen and her staff, our outside partners who all year long provide great resources to the members of our deferred compensation advisory plan. I have been on this board now for just a couple of years but have been very much an admirer of a process that is continually improving, continually serving, and is a great resource for our members who need this type of plan to supplement and their future. So thank you very much, everyone. [applause]

>> Mayor Reed: I'd like to invite District Attorney Dolores Carr to join Councilmember Constant and me at the podium as we recognize the week of October 17th to 23rd as national protect your identity week in the city of San José. Councilmember Constant has some details.

>> Councilmember Constant: Thank you, mayor. This is a great week. You can protect your identity and save at the same time. If you don't protect it, your savings will disappear. So as you know, the City of San José is fully committed to the safety of our residents throughout our community. And there is no doubt that identity theft is on the rise, not only in our own community, but across the nation. In fact, just last year, nine million Americans were victims of identity theft. That's like the entire population of our city times 9 going through all the countless hours of getting their identity back and getting their credit histories back in order. It is really important for us to educate the

public about the dangers of identity theft and most importantly, how to avoid becoming a victim. Because it's simple things that you can do. Like making sure you change your pin and your passwords on a regular basis. And make sure that you go through your home and making sure that any old documents that have your personal identification numbers whether it be your Social Security number, your driver's license, your date of birth all those things that you use to identify yourselves are disposed of in a proper way. Shredding them, and making sure that nobody can access them. This past weekend, different Dolores Carr and I hosted a first of its kind shredathon in the City of San José, where we invited residents from throughout our community to bring their sensitive documents to District 1 where we partnered with Cintas Document Management and had a huge shredding machine for people to shred their documents. It was incredible to see the line of cars and really the stuff that people brought. One person brought 63 years of tax returns and supporting documents that they had not had a comfortable way of disposing of. Another person brought a vanful of nearly 30 years of documentation of all sorts, from their personal documentation, as well as their business documentation. At the end of the day, we shredded 3 tons of sensitive information at this shredathon. Really helping people not become victims. So this week is protect your identity week, which is October 17th through the 23rd. We just want to continually raise the awareness, and I want to personally thank Dolores Carr and her office for partnering with us to bring this important message to the City of San José. With this we have this proclamation.

>> Thank you, Councilmember Constant. Mayor Reed, and good afternoon to everyone here, as well as our councilmembers. I really want to thank the recognition of the city council for bringing this very important issue to everyone's awareness. Because we really do know that identity theft is on the increase and that criminals are becoming even more savvy in the high tech ways of preying on other people. But I also want to take this opportunity to highlight the work of our react task force. Which is one of only five task forces in the state of California which specializes in going after complex, high tech criminals and also, identity thieves. It's administered by the office of the District Attorney here in Santa Clara County but it encompasses the San Francisco Bay Area. And we recognize that San José police department, the City of San José, is a very important member of that task force. Over the past 15 years, react has handled many important high tech and identity theft cases in our community. And it plays a critical role in protecting Silicon Valley's economy. It's been a pioneer in computer forensics techniques, which is used to identify criminals that use computers, including child pornographers and

trade secret services. One example of our work over the past year was an investigation of someone who posed a credible theft on an Internet forum that threatened to blow up his school using hand grenades. It was react's investigation that led to the arrest of a juvenile in North Carolina, and fortunately no damage was done. But despite react's success over these past years its funding is continually threatened and has been threatened this year by the legislature's failure to extend the vehicle license fee for the next fiscal year. This may force not only react here in our community but other similar task forces throughout the State of California to close down next year. So I really need your support, that and the city council and all of the voters and residents of our community, to late your state legislator know that you want to have the vehicle license fee extended past this next fiscal year. Because we really need react to continue its great work that it's done over this past 15 years to protect us from the many criminals and predators that are out there to do us this damage. So thank you again for this recognition. From the city council, I look forward to having our city and county continue to work together to keep this a wonderful and safe community. Thank you very much. [applause]

>> Mayor Reed: Like to invite Councilmember Herrera and Darren Shaw to join me at the podium as we commemorate Darren as the 2010 California Association of Community Managers vision award winner for his exemplary service to the residents of the villages in the Evergreen community. Councilmember Herrera has the details.

>> Councilmember Herrera: Thank you, mayor. I'm very proud today to have Darren Shaw here from the villages. He is the general manager. Just as the City of San José is committed to sunshine and open government, I think it's very appropriate today to recognize and commend Darren. On July 28th, 2010, the California association of community managers recognized Darren Shaw at their statewide expo. Darren received the 2010 vision award for communications management. This is over 1200 industry professionals attended this conference, and Darren and ten of his colleagues received the association's award. This is indeed a prestigious award. So Darren and his staff have been recognized statewide and in the private sector for promoting a focus on openness and transparency. And I think that's really great. And for the past three years Darren has served as the general manager of the villages. And the villages has over 4200 residents, 100 communities organizations and clubs. And I can attest that Darren is considered a rock star in his community. He reflects the values of the village

residents and he really works to serve their needs and to reach out to them. He's made a big impact and he won this award for developing a communication program that provides timely information to the residents of his community. So Darren's really found a way to reach out to his residents. He's made changes big and small to improve communications between all of the residents and clubs. He has a management team of 120 employees that maintain the grounds and facilities, provide 24-hour-a-day security, provide a wealth of social and recreational opportunities for the residents, and he works tirelessly to ensure that his work is transparent and that the staff is responsive to the needs of the resident. So how does he do this? He reaches out on a personal level, even inviting residents of small groups to have dinner to hear their concerns, all the way to larger groups where he hosts and moderates town hall meetings where residents voice their opinions about a range of topics, where amenities should be located, facility improvements. These meetings and other important events are broadcast on the villages community cable channel for residents that can't attend. In fact, I'm sure many of them are watching today. And villages residents now receive a twice-weekly e-mail update for residents which they call Fast Lane. These e-mail updates are a fast, efficient way to update residents about upcoming events and important issues. So the bottom line: I'm very appreciative of Darren's great work here in the villages in Evergreen, District 8 and the villages, and very proud of his accomplishment, and I know the residents who are watching at home are very proud of Darren's accomplishment, too. And at this time I would ask Mayor Reed to present Darren with the commendation and for Darren to say a couple of words.

>> Councilmember Herrera and mayor Chuck Reed, thank you very much for this commendation. I am very privileged and very fortunate to work with such a fine community like the villages and I'm very honored to not only be recognized by my industry but to be recognized by the City of San José as well. So thank you very much. [applause]

>> Mayor Reed: We'll now take up the consent calendar. Any items councilmembers would like to pull off for discussion? I have a request on 2.7. Any others? Motion is to approve the balance of the consent calendar. All in favor, opposed, none opposed, that's approved. Item 2.7 has to do with the naming rights at HP pavilion. Don Grelnick.

>> Mayor, members of the council, Don Grelnick, general counsel for San José arena management. We're here to support this item, and I'd like to pay particular credit to Sheila Tucker of the City Manager's office and Patty Degnan of the City Attorney's Office for their fine and quick cooperation and help on this matter, thank you.

>> Mayor Reed: Thank you. It shouldn't go without noting that there's some money in this for City of San José, $5,000 a year for the city, that's a good thing. Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. You actually took the words right out of my mouth. I know that under the earlier agreement, the money would ordinarily go to capital enhancements on the building. I know the Sharks are going to undertake -- or SVSC is going to undertake those improvements moving forward anyway. And obviously, this is a net benefit to our general fund. So I understand their understanding and their partnership in these difficult times. I'd move to approve.

>> Mayor Reed: Motion is to approve item 2.7. All in favor, opposed, none opposed, that's approved. Taking us to the report of the City Manager. Ed Shikada sitting in today for Deb Figone. I think the City Manager is at the international City Managers' Association conference.

>> Ed Shikada: That is correct, Mr. Mayor, thank you very much. On behalf of the City Manager, I would like to just take a moment to highlight the conference which is currently going on at our convention center. San José is the host city for the 96th annual conference of the International City-County Management Association, also known as ICMA. ICMA is the leading professional and educational organization worldwide for city managers, in fact several of them have just joined us at the top of the room. Managers administrators and other public management professionals. This year's conference has attracted nearly 2800 visitors from around the nation and around the world. We appreciate the thousands of room nights that they have booked at our local hotels and we're sure they're enjoying many of our great restaurants, as well. Over the past several days the city has played host to a variety of educational sessions, social events, tours, and other activities that have allowed us to showcase Silicon Valley's many attractions and innovations. In fact our centering's currently at the conference this afternoon presenting on a panel that's discussing revenues and the cost of service delivery for those

governments. We're also conducting tours of City Hall as you see, and people both here right now as well as we pay see a few others this afternoon, watching the city council in action. They'll also be learning about the innovative and sustainable features of our campus and in fact the conference will be hosting a major social event here this evening. Being the host city for a conference like this takes an extraordinary effort from a number of people. So on behalf of the city manager, I would like to say thank you to the many city staff as well as our partner organizations throughout Silicon Valley who have put in an extraordinary effort in order to showcase San José and ensure a productive and fun experience for our visitors. That includes my report.

>> Mayor Reed: Thank you. We'll now move to the 3.2 item that's our 2009-10 annual report. Just in time for some folks from out of town to hear how we've managed to balance 115 funds all in the positive I believe. So I'll let Jennifer Maguire lead the presentation on the January report.

>> Jennifer Maguire: Good afternoon. Jennifer Maguire, budget director. I am pleased to present you with a brief overview of the City's 2009-2010 annual report. This document complies with the city charter and is the City Manager's vehicle for summarizing and analyzing the financial performance of the city for the preceding fiscal year. Throughout the report you will find a technical comparison of actual revenue collections as compared to actual expenditure levels in each budgeted fund and an explanation concerning material differences between these amounts. The report also includes a number of recommended budget adjustments in almost every city fund. I did want to point out that the budget office did reformat the end report document this year, took a lot of effort, so we're very proud, and we hope that the city council and the public finds the informing easier to read and understand than the previous format used to present our year-end budget information. Very similar to 2008-2009, it was a good news, bad news story for 2009-2010. I am happy to say that on an overall basis the city ended the year as expected due to prudent budgeting and very active management of our over 100 city funds throughout the fiscal year. The lingering effects of the severe economic downturn, however, continued to negatively impact many of our revenue sources, especially those in the General Fund, development fee program, transient occupancy tax fund, airport fund, and capital budget programs. As a year in review, 2009-2010 marked the eighth year of General Fund shortfalls, and the city council addressed an $84.2 million budget gap in developing the adopted budget, and eliminated 221 positions citywide. Like the previous year, additional General Fund rebalancing

actions were necessary during 2009-2010 as a result of the continuing economic challenges. Last October at this time, as part of the annual report, we took our sales tax estimate down by $10.7 million based on lower receipts in the preceding fiscal year, and we further brought down our revenue estimates at mid-year by about $6 million. Both program expenditure reductions and the use of our economic uncertainty reserve were used as tools to rebalance the budget this last year. Financial challenges in our other city funds also resulted in rebalancing actions and the elimination of almost 53 positions during the year. By far the largest downward adjustment was to our development fee programs where almost 44 positions were eliminated last November. As a result of the city council's prudent fiscal decisions during the year I'm proud to say that the General Fund ended 2009-10 with a very small additional fund balance, and fund balances in all funds ended on a positive note. We do believe that the difficult budget-balancing decisions that the city council made in June to address the record General Fund $118.5 million shortfall and other fund shortfalls that were forecasted for '10-11 have well positioned the city for yet another fiscally challenging year due to our continued impact of a weak local economy on our revenue sources. As I mentioned in the previous slide, the General Fund did end the year with a very small additional fund balance. In fact, the General Fund ended the year with a fund balance of $141.4 million which was only $6.6 million above the estimate. This variance represents about .3% of the General Fund budget. The additional fund balance was almost entirely result of additional one-time expenditure savings of $5.8 million which is .6% of the total budget as our revenue estimates were almost dead on, where they were within .1% of the budget level, or $825,000. Factoring out the dollars owed back to our development fee program reserves and the true-ups of our rebudget projects that were approved by city council last June, the variance is really at $3.6 million for 2009-2010 or .2% of the budget. This next slide shows the administration's recommended allocation of the small additional fund balance in the General Fund. Starting with the $6.6 million, we are recommending cleanup actions totaling $3 million which will bring the -- what we consider to be the real fund balance variance to the $3.6 million level. There are two categories of cleanup actions. The first, as I mentioned, would be our development fee recommendations where we true up our costs and our revenues for our building, planning, Public Works and fire fee programs and put any excess money back into the reserves. And the second is our rebudgets or other technical cleanups in order to complete existing projects that the council's previously approved, or to follow any previous council direction or preapproved agreements. With the $3.6 million available in fund balance, based on the closeout of 2009, 2010, and the monitoring of the '10-11 budget, we are recommending using the additional

fundings for a limited number of required technical rebalancing actions which I will present details on in the next slide. It is important to note that we have a number of what we call net zero budget adjustments for new grants and reimbursements and fee activities contained in the report. They are primarily for the Parks, Recreation, and Neighborhood Services and police department grant and fee programs. The most important thing I think about this slide is that unfortunately, for the second year in a row, we have no fund balance remaining to allocate to the 2011-2012 future deficit reserve or our unmet deferred infrastructure needs per city council policy. As I mentioned in the previous slide, there are required technical rebalancing actions in the General Fund totaling $3.6 million recommended as part of the report. Two items that require funding adjustments are our property tax revenue estimate, which needs to be decreased by $4.1 million, and the sick leave payments upon retirement expenditure appropriation, which needs to be increased by $3.9 million. The funding for these two items can be offset by the use of that $3.6 million in additional fund balance by an increase in our sales tax revenue estimate by $4.2 million and by $291,000 in other small adjustments. For property tax we need to decrease our estimate by about $4 million to bring the -- or projections in line with information provided by the county of Santa Clara controller-treasurer department who gave us new information about property tax late August, 2010. We need to adjust our secured property taxes, our SB 813 property taxes, and our unsecured property tax categories based on their view of the world. We think we have appropriately set this estimate, but we are in constant contact with the county. And if any further rebalancing actions need to come to that revenue estimate, we'll bring them forward to the mid-year budget process. Our sick leave payments upon retirement appropriation is recommended to be increased by $3.9 million to reflect projected retirements and payments for 2010-11. For 2010-11 we have over 100 members of the police and fire retirement system and 400 members of the Federated retirement system that are eligible for retirement, resulting in a potential liability of $21 million in payouts this fiscal year. Based on the fact that last year we had expenditures of $14.6 million in this category, this action will bring the current year appropriation in line with our anticipated year-end expenditures. As you may recall, last June we actually put a little over $4 million into our sick leave appropriation at the end of the year, and we came within $200,000 of the total expenditure. For sales tax, we do have a bit of good news. We are able to increase the estimate by $4.2 million, based on our actual 2009-2010 revenue performance. When we put together the adopted budget for 2010-11, we expected our sales tax to drop 5%. In actuality it dropped 3.5% so that is allowing us to improve our base level collection estimate for '10-11. This will bring our estimate to requiring 3.5% growth for '10-11. But we

think that is doable because of -- we have some one-time accounting adjustments and some other technical adjustments from a triple-flip true-up payment from the state that should get us to our 3.5% growth estimate, but we will monitor that carefully. We have some small other adjustments, primarily to close out our Healthy Neighborhood Venture Fund, our municipal health services fund, and our emergency communication system support fee fund that were previously approved by council to close out that provides a little bit of additional resources to make these much-needed adjustments in the General Fund. For context to our annual report recommendations and budget situation, the next three slides will give you a recent picture of our property tax and sales tax revenues, as well as our sick leave payments payment upon retirement expenditures. For each of the slides, we simply went back to 2005-2006 and used that year as our baseline, so you could easily see where we were four short years ago, how we actually ended in 2009-2010, and what our recommended estimates would look like for '10-11. In our property tax category, after years of steady and healthy growth, the city is now beginning to experience declines in this revenue source. In 2009-2010, actual property tax revenues fell 4.1% overall from the '08-'09 level, and in '10-11 we expect revenues to fall even further, with another 3.6% bringing collections below our 2007-2008 levels. The economic lag in this revenue source is evident when you compare property tax collections and our sales tax collections that are shown in the next slide. For example, in 2008-2009, while property tax grew by 3.5%, sales tax fell 14.5%. And that story will continue into '10-11 when -- where property tax is still expected to be negative this next year, and we're expecting small growth in our sales tax estimates. In the sales tax category, last year marked the second year in a row that year-over-year revenue declines have been experienced. In 2008-2009, sales tax revenues dropped 14.5%, and they dropped another 3.5% in '9-10. Compared to two years ago, this category has lost approximately $26 million in revenue to the city. Despite our recommended 3.5% increase to the sales tax revenue estimate that is included in the annual report, the 2010-2011 estimate of $127.6 million would still fall well below the level experience in recent years, let alone the peak collection level of $169.2 million in 2000-2001. Finally, in our sick leave payments upon retirement category. As I discussed in describing the required technical rebalancing actions, we are recommending a $3.9 million increase to this appropriation from about $10.7 to $14.6 million to reflect our anticipated payouts this current fiscal year. As shown on the slide, this level of expenditure would be consistent with what our actual experience in '9-10. Given our potential liability of $21 million, it would be prudent to expect at least that same expenditure level or even higher in '10-11. As you can see on the slide, just four years ago our General Fund

expenditure level in this category was $5.6 million. In addition to higher wages which grew -- excuse me -- in addition to higher wages which grew over the period, the rapid increase in sick leave payments upon retirement over the period can also be attributed to a key demographic trend that more retirees are retiring, and that trend is expected to continue over the next five to ten years. In fact we did look back, and compared to 2005-2006, we had an increase of about 75% of more employees retiring in '09-10 compared to '05-06. Moving on to our special and capital funds, we have some performance results in the selected few funds. In our airport operating funds the airport passenger activity did decrease 7% year over year to 8.2 million passengers by year end. However, the funds did finish the year with additional funds balance due to expenditure savings and the conservative management of the airport fiscal situation by the airport staff. In our transient occupancy tax fund, we did end the year a little bit better than we expected, but we were still 10% below our revenue collection levels from the previous fiscal year. We do have some recommended funding allocations to the three recipient organizations that, by ordinance, get this funding. In the convention and cultural affairs fund there was $191,000 in additional fund balance due to higher revenues. However, as reported previously to the city council, a notice of default was issued to Team San José due to an exceeded nonpersonal expenditure appropriation, and the City Auditor is conducting follow-up work which will be expected to be presented to you in November. Moving into our construction and conveyance taxes, which fund the parks, library, fire, service yards, and communications capital programs, we had a slight piece of good news. We may have reached bottom on this particular revenue source. We received a total of $22.5 million by year end, compared to a $20 million estimate, primarily due to better fourth quarter performance. While this level of collections however was slightly better than estimated, it still should be noted that we are down 54% from the $49 million collected in 2005-2006 which makes it very challenging for our capital programs. As you can see by this chart, this revenue source is extremely volatile and needs to be monitored very carefully this fiscal year. The next chart shows our two major revenue sources that fund the City's traffic capital program, the building and structures tax and the construction excise tax. For 2009-2010 both revenue sources continued their weak performance experienced in 2008-2009 due to slow development. In fact, this is one of the areas that we have rebalanced several times. Compared to the beginning of the decade, revenues are down about 60%, and if you just compared the collection levels to two years ago, we're down about 37%. Again, fourth quarter performance improved slightly due to commercial development. However, we don't have any current indication right now that this performance will continue into '10-11, but we do

believe that we are conservatively positioned with our revenue estimates this year, so hopefully we don't need any further adjustments. In our special and capital funds we have a series of recommended actions contained in this report. Again, in the two categories of cleanup actions and recommended adjustments, again, we reconcile every fund with our CAFR that the finance department produces, we have rebudget adjustments, net-zero funding transfers, grants and reimbursement revisions. We also have finished off the employee total compensation reduction adjustments. We did the General Fund at the end of June, and we came back and adjusted all the special funds for the compensation adjustments that several employee groups took in June. We also are recognizing a limited number of new grants and reimbursements, updating some cost and revenue estimates, and establishing a very limited number of new projects. In closing, as we move forward, the administration will continue to closely monitor the City's financial condition this fiscal year and will provide feedback through our bimonthly financial reports and our mid-year budget review. Over the next several months the budget process is kicking off yet again. We are going to be working on the development of the 2011-2012 budget. We'll be -- we're actually underway working on the preliminary forecast for 2011-12. We have a city council budget planning session scheduled for late November. The community budget survey meeting in January will occur again, and the five-year formal forecast will be released at the end of February. With that, I'll stop here, and we have staff available for questions. Thank you.

>> Mayor Reed: Thank you. Well, first let me say it's not an accident that you balanced all the funds, all to the positive at the end, especially the General Fund that came 1% of the numbers. Because you've done it before. And you and your office, and the staff and dating back to even before you were here, when you were the deputy, we have a long history of being able to manage the money, even though we have less money. And it's harder to manage. Nevertheless, we don't have a huge ending fund balance, we also don't have a negative and that's a really important thing. So I want to compliment you and your staff, because I know there's lots and lots of work that goes into trying to manage 115 funds. So that's a good thing, and it ought to be noted that not every city can brag about that, and we are very happy to be able do that. There were a couple of things you mentioned that I just wanted to ask. The one time, I'm already thinking bit next year of course. You ended on focusing on what we have to do for next year and I wanted to ask some things that are really more about next year. The one time savings that we are -- have done and the one-time spending that we are doing in this year's budget, hopefully that

all has to roll in and all has to balance at the end of the year. But we're starting work on next year's budget knowing that we had $20 million or so of things that we funded with one time funding and there's a list that came out with the budget in brief I think is attached to that. So if anybody's curious, that is a long list of 20-some-million dollars of one-time funding that is not included in what we think of the shortfall potential, because it was one-time funded intentionally. That's important. Clearly, during the '9-10 year, we had to deal with the ever-rising costs of pensions and additional payments into that, and we have a task force already working on that, bringing us some recommendations which we'll take up as part of that November 18th budget study session, because that problem has not gone away and just continues to get worse. You did say that you had finished all the work on trying to figure out all of the concessions and the sacrifices that our employees made going into the budget, and most of that is affecting the '10-11 budget. It wasn't clear to me if there was part of that affected the '9-10 budget, because those were all actions taken in June for this fiscal year that we're in.

>> Jennifer Maguire: Yes, it's all to adjust the '10-11 budget, not the '9-10.

>> Mayor Reed: So if anyone is looking for that they won't find that in this annual report, because this is strictly looking backwards.

>> Jennifer Maguire: There's technical actions here that will reduce the personal services costs in the special funds and put that extra savings into the fund balance which better positions all of those special funds this next year.

>> Mayor Reed: Okay, thank you for doing a great job on this. Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. I wanted to move the staff recommendation.

>> Mayor Reed: We have a motion to approve the staff recommendation.

>> Councilmember Oliverio: And I just wanted to say the same, many of the same things. The accuracy is pretty incredible, on the .3 .2, .1, the various scenarios you brought up. I think the constant dilemma of sick leave is going to be a problem for us as people retire. And as you mentioned, the vulnerability of 21 million next year is pretty dramatic, seeing that this year was 14.6, the year before, which was supposed to be the record, and I think that's going to be real tough, because that's going to take away just anything that we would want to do here on the council. On slide 6, I think that's where you had the property tax.

>> Jennifer Maguire: Uh-huh.

>> Councilmember Oliverio: So in 2010-11 that's your anticipated. And then if I'm correct, or if I'm aware of the right situation here is when property taxes or property values fall, that the increase because of prop 13 is limited. So that then our -- do you see that in the future moving out to the future years that it's just very incrementally moving up at a slow pace?

>> Jennifer Maguire: Yes, we are bound by obviously prop 13 and there only can be a 2% at the maximum annual inflation factor on our secure property taxes which is the bulk of our property taxes. So it is going to be -- should be very slow unless -- you know, all of a sudden we have a big boom in property taxes, and there's a big turnover of the properties. But in fact our average -- our median house price just actually fell this last month, so it is something that's a little bit of a rollercoaster. We're not out of the woods yet on our housing market.

>> Councilmember Oliverio: So if I'm looking at next year, and then I look at next year's anticipated pension payment from the city which I think is about $240 million, we have definitely outstripped our property tax revenues.

>> Jennifer Maguire: Yes, all funds, even for '10-11, all funds we are expecting to spend about $250 million we just calculated in our retirement. So in General Fund only in '10-11 it's 192, so they're about even, and the retirement contributions are only expected to go up.

>> Councilmember Oliverio: Okay, thank you.

>> Mayor Reed: One more question about the ending fund balance. Could you just talk about what goes into that ending fund balance?

>> Jennifer Maguire: Basically, our ending fund balance is the entire $141 million is a combination of unexpended reserves. It's any expenditure savings we're examining during the year. Some -- we also expect to have funding set aside that we deliberately are not spending that it can be carried over to the next fiscal year to rebudget projects. And there's also a liquidation of carryover encumbrances. So basically it's the revenues, the expenditures, and the liquidation of carryover encumbrances that make up that 141 million.

>> Mayor Reed: And if there are projects that aren't completed?

>> Jennifer Maguire: If there are projects that are not completed that happen that expenditure savings is reserved for that project and carried over to the next fiscal year to finish off that project. And that number has come down in recent years. In fact, last year in the annual report we actually unrebudgeted a bunch of projects to build back up the economic uncertainty reserve and when we ended this last fiscal year when we made our recommendations for rebudgets in June we were extremely conservative in what we asked you to rebudget. So if it was all discretionary we did not rebudget because we needed to save some of that money to help with our sick leave payments upon retirement appropriation and what have you to balance out this last fiscal year. Going forward there's just actually very minor adjustments. It's only -- I think it's about in the million -- only about a million and a half worth of ups and downs of rebudgets that we're bringing forward in this report. So it's probably the smallest I think I've seen in my career.

>> Mayor Reed: I have no cards from the public to speak on this, correct? No additional comments from the council. We have a motion on the floor to approve the staff recommendation. All in favor? Opposed, none opposed, that's approved. Our next item is 3.3, actions related to airport operations, staff consolidation. Bill Sherry

and some of the airport staff are here, for if we have any questions. I don't know if you're going to make a presentation or not but it's good to have the staff here.

>> Bill Sherry: Good afternoon, Mr. Mayor. My name is Bill Sherry, director of aviation for the City of San José. Joining me today are Kim Aguirre, assistant aviation director for San José, and John Aiken, deputy director of operations. We do not have a presentation, but I do have a few opening remarks. This action that you have before you today is a continuation of our cost-cutting efforts approved by council in May as part of our competition plan. We're very sorry -- I'm sorry -- that this action impacts some of our dedicated airport employees. But it also improves and enhances aviation safety and security. It saves the airport $250,000 approximately in FY 10-11 and has ongoing savings in excess of a half a million dollars. I think it's important to note that this action is one of many actions that council has previously taken, and there are more actions coming as the year continues, in keeping with the competition plan. We're now here to answer any questions that the council may have.

>> Mayor Reed: Thank you. I think we'll have a few. I first just wanted to add to the staff report my conversations with the CEOs of airlines, and their importance that they place on cost control. Making sure that we remain competitive on a cost basis is just vital to being able to keep the air service that we have. We're working really hard to get additional air service. Had some success with Alaska recently. But I did meet with Bill Ayer, CEO of Alaska, and one of the things that he was kind of counting on and making his decisions was that we were committed to maintaining the cost controls at the airport. This is one of those steps that we need to do in order to remain competitive on a cost basis and keep that service. We start losing the service, we're going to lose a lot more jobs than we're talking about here. So that's vitally important and I want to thank the staff for continuing to focus on this and being creative and ways to do this because we have many more things that we have to do to be successful and get that air service back. Councilmember Liccardo.

>> Councilmember Liccardo: I just wanted to thank Bill and your whole team. I know this has been a dreadfully difficult time and I know it's tough for all the members of the team and particularly those that have lost their jobs as a result. But I want to commend you all on the thoughtfulness of this approach rather than simply a slash and burn approach looking for ways to improve efficiencies and to take advantage of ways in which employees can

gain skills with technology to improve service so I really appreciate the thoughtfulness of that approach and obviously we hope with the return of flight volume we're going to see an opportunity to hire once again. In that event I move to approve.

>> Mayor Reed: We have a motion to approve the recommendation. Councilmember Pyle.

>> Councilmember Pyle: Thank you. I'd like to echo those same sentiments and it's good to see you all here today. I did want to say that I appreciate everything that you are doing but when people see communications center, fewer people, there could be a little bit of a concern. So is it because of the construct of the new communications center that you are able to make these efficiency moves?

>> Bill Sherry: Yes, councilmember. It is really leveraging the new technology that we brought into the airport with the modernization program. It's also an ability of -- or an outcome of us moving the administration offices over so we're consolidating over there. And albeit that it's doing away technically with the communications center it's really a restructuring and it enables really I think enhances aviation security because, and safety, because we're allowing and we're applying better skills and better trained disciplined staff to do these duties. And it also gives the staff an opportunity to rise in the ranks. So there's really multiple wins in this move.

>> Councilmember Pyle: Thank you. Really appreciate all that.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Yeah, I also just want to say thank you and just in terms of the opportunity for employees, you're providing a career path and I think that's really great. Thank you.

>> Mayor Reed: Have one request from the public to speak, we'll take that testimony now. Linda Didis.

>> Hi, my name is Linda Didis. I'm the business agent that represents the community service operators that are being asked -- being eliminated. Back in 2008, the airport hired a consultant the Todd Yankee corporation to give input on suggestions for streamlining services. The airport informed us it was a draft and it was not adopted. We requested a copy of that report and a section was provided to us last Thursday at 5:00. The report specifically says the airport communications staff should be enhanced to develop this into a strong entry level position. From that suggestion the airport has decided to actually eliminate the entry level positions by eliminating the entire class of CSO. The job duties of these entry-level positions will be given to a higher classification of airport operations specialist. Senior airport operations specialist. Last year the airport eliminated another entire level of entry level classifications that of airport operation specialist and let their work get absorbed by the seniors. Before I run out of time I want to say that we're respectively asking that the city council defer this for a week so that we can have one more meeting with the airport to give input on the information that we received last Thursday. I asked for another meeting on Friday, and we don't have a meeting set up until this Friday on this. And I'll continue with my speech and see if I can get it done. So they've laid off six operation specialists last year, nine CSOs this year. Our senior operations specialists that are taking these jobs now have to learn to be a communications operator in a matter of a couple of months. And they're very concerned. They also don't have -- didn't have to work previously didn't have to work graveyard shifts and now they are all going to have to work graveyard shifts. In 2005 we had 13 seniors, and now the recommendation is for 19 seniors. These are all going to be higher paid $8 an hour more employees than the entry-level positions. So we're asking to be able to give input to the airport about this change that's going to be eliminating another nine of our entry level workers at the airport. We lost 50 custodians you know in this last cut and they continue to cut from the bottom and we're not sure what they're doing at the top, thank you.

>> Mayor Reed: That concludes public testimony. Councilmember Oliverio.

>> Councilmember Oliverio: Hi, airport staff. Did you have anything as far as -- my guess is you were making several different considerations in anywhere you decided to cut. So do you have any comments?

>> Bill Sherry: No. Obviously, I respectfully disagree with some of the comments made. We have communicated and worked with the unions. But having said that, from the very beginning we decided that as we had to downsize the organization, it was going to be as proportional as possible and I believe that we have done that. I've done away with several deputy directors, mid management level, all the way down to entry level. So I think it's been proportional.

>> Councilmember Oliverio: Thank you for your comments. Motion to approve.

>> Mayor Reed: We already have a motion on the floor for approval. Councilmember Campos.

>> Councilmember Campos: Thank you. Bill, is there a reason why we couldn't defer it for a week so you could have that final meeting with Ms. Didis and her team?

>> Bill Sherry: There's not an urgency on this in terms of weeks. I believe we've answered all of their questions. I don't believe there is a need to defer, but if you decide to defer you certainly can.

>> Councilmember Campos: I'm only one vote. I ask that we defer it for one week so the meeting can take place. The maker of the motion, that's a friendly suggestion. I leave it up to you to take it up or not.

>> Councilmember Liccardo: Bill, just to be clear, is there any time sensitivity at all in terms of this week versus next week?

>> Bill Sherry: Not in weeks, councilman.

>> Councilmember Liccardo: Okay, I'd be happy to make a motion to defer for one week.

>> Mayor Reed: All right, motion has been modified to defer for one week. Councilmember Kalra, either comments or questions? We have none. On the motion to defer one week, all in favor, opposed, one opposed,

Councilmember Oliverio, that's it, one opposed, motion carries. See you next week. Our next item would be item 3.4, response to the civil grand jury report, should the city council continue to subsidize Team San José's increasing losses. We have a presentation from staff on that.

>> Paul Krutko: Sorry, mayor, little choreography. Paul Krutko, chief development officer. Good afternoon, mayor and council. We have a presentation, and I need to get -- for the council, in terms of the administration's recommended response to the civil grand jury report. And I'll walk through that and then we have staff that's involved in contract management. As the chief development officer I'm the principal contract administrator for the Team San José contract and this is team that I have the good fortune to lead on that effort. So the title is the title that the grand jury put on the report. Little background I think is important on the relationship with Team San José. In 2003 was when the city issued an RFP to find a new operator, as you recall we moved from city administered, operating department, convention arts and entertainment department to an effort to privatize the management of an operation of the convention center. In 2004, council authorized awarding a five year contract to Team San José. And in 2007 the grand jury issued its first report, the report before you is their second report in this matter. And they at that time recommended that council move forward with finding another operator. We, the council based on staff recommendation declined that recommendation. And directed us to negotiate a new agreement with Team San José. In 2009, we brought that agreement before you and it was approved. In this year, 2010, the grand jury again looked into this situation and re-released a report. My presentation today is going to go through their specific recommendations where we agree and disagree and make a recommendation for council how we should respond. It's important to note that the council has had some additional issues brought before us, we've brought before the council by the staff subsequent to the grand jury report and I'll touch on that. There are a number of audits that are ongoing at the present time. Jennifer in her presentation, budget director Jennifer Maguire, alluded to the fact that earlier this afternoon you approved a modification to the city's budget to be reflective of overexpenditure that had been done by Team San José in the June time frame. That overspending caused us to issue a notice of default, and following our earlier presentation, or bringing forward to the council of a response, council directed to us move forward with the additional audits. We think because of the time frame that we're on with responding to the grand jury, it's important to move forward with the response from the grand jury while that other work is ongoing. I'm going to speak basically to some problems with the grand jury

analysis. It's important to understand that what the grand jury really was looking at, and identified, is shown on page 4 of your memo really in summary form at the top. And their primary concerns has been escalating net operating costs during the time when the city is dealing with a $116 million General Fund budget deficit, that was not the budget deficit that you just dealt with, the one prior to that. And concern that somehow there was a tie between those operating deficits at the convention center under Team San José's operation and your need to cut services elsewhere and slash expenditures elsewhere in the city budget. The second point was that the selection -- the performance measures in the new contract did not work effectively to reduce Team San José's operating losses. And finally 3, that the funding for the operation realized heavily on city subsidies rather than revenues generated by Team San José. So that's the general framework of their analysis. The specific areas of concern are shown on the screen at this moment. One was in terms of the right-sizing of the convention center staff, the level and scope of Team San José executive team salaries for the executive management. Again the notion that performance measures weren't reflective of targeting increasing revenues and decreasing operating losses, but rather focused on overall economic benefit; four, that the incentive fee is based on Team San José revenue and a concern that we were somehow not properly applying the municipal code in transferring T.O.T. resources to fund 536. Which is the convention operating account. I'm going to walk through each of the recommendations and give you a bit of analysis and then close with where we're in terms of our other work in regards to Team San José. The first finding is that we had subsidized this higher than -- essentially higher than the anticipated operating losses and their recommendation is that the grand jury recommendation is because our current agreement has a termination for convenience, and this has occurred, that the city could work to renegotiate the contract to establish different performance standards. Now we disagree with this finding, partially, in a number of respects. The first is that it's important to understand how fund 536 works. It's not just the operating revenues that go into the account from the revenues generated by Team San José against the expenditures but it's also the overall performance of the hotel community in San José. Essentially we put money into 536, under the provisions of the Muni code and council operate on council approved budgets that put a 3% amount into that account from the transit operating tax. What would occur, over the period of the economy in its upswing before the most recent recession is we were growing in overall fund balance and it grew to the level of $7.6 million. That meant that the difference between revenues and operations and the contribution of T.O.T. was actually creating a situation where we were growing the fund balance. Council will recall that we talked with you about the importance during the expansion to have

that fund balance, and the phrase that we used in a number of presentations was a glide path. That as we were moving forward with expansion and renovation we would need to tap that operating account and pull money out of it to ensure that we were in good stead when we reopened the doors as a fully new expanded convention center. It's important to know that while at the heyday of that growth we were at $7.6 million steps. I just checked this morning. We are at a $3.1 million level now. So the fund balance has declined by $4.5 million from its high point. That's as planned. We are on the glide path. We are continuing as we do monthly managing Team San José's budgetary issues and trying to make sure that we're making decisions, encouraging them to make decisions that stay in the glide path and we are at that point now. The other point in terms of the recommendation is that when council recall in the new contract approval, we moved from trying to establish performance measures five years forward, in other words, in this year, trying to decide what the level of the economic performance would be, in 2014, to move to an annual negotiation of performance measures that reflected the reality of the economy operations and expenses and so forth. So in this regard, our disagreement is with them -- with the grand jury is that we actually do provide specific performance measures and they are in the form of an annual level. So moving to the second recommendation, in the grant findings from the grand jury recommendation, there is an identification from the grand jury that a significant portion of Team San José's operating lost has contributed to the cost and salaries and benefits of shared employees. Let me stop right there. Shared employees are those employees that were at and still a small number are at the convention center and still had city classifications. Were in effect city employees managed by Team San José and then continuing on overhead, paid to the city for use of those employees in the Team San José's operation. The recommendation is we should reassign these employees, which would mean reassignment would absorb them back into the city and allow the Team San José to replace those employees with private sector equivalents to reduce Team San José's operating loss. We agree with this finding partially. In fact, that is what has actually occurred. Over the last two budgetary cycles, we have eliminated first, in the '09-10 budget process, nearly 30 positions, 29.75 positions that were city shared positions were eliminated and those employees who had rights to positions under civil service back in two other city departments proceeded through the budgetary process through the bumping process to find new homes. Now in this recent budget that you approved in 10-11, 42 more positions were eliminated due to declining operating revenues, and business at the convention center. That brought the number of city positions that are still under Team San José management to 14. So again, to recap on the order of 72 positions have been shifted out

of Team San José, to adjust the budget on an annualized base. The employees that are left, it's important to understand though, the shift that we've made, we now have a model in which the employees are brought in, to work in the convention center as meetings and shows are being held. They're not on full-time working within the facility. Who's left are 14 employees who work on basic systems in the building, HVAC, repair, maintenance, electrical services. So in effect what the grand jury was identifying was that we should move to a business model that was much less reliant on city employees under Team San José management, and the fact is over the last two budget cycles council has actually implemented those changes in the budget that you've approved. The third finding pertains to an incentive fee that's a portion of our contract. That their findings the incentive fee in the current contract is based on revenues and contains no incentive for Team San José to rein in costs which continue to escalate. So in other words, the grand jury wanted to see a clause that was more focused on the operate profit, the difference between revenues and expense than solely on revenue. The difficulty with this one and why we disagree is that under IRS procedures a management fee can only be based on revenues, can't be based on gross profits. So given the legal status of Team San José, this is the way we had to do it. It should -- it's important to note that we have in the contract a measurement on gross operating profit. We have reported it to the council as we've appeared before council, and it does reflect what's going on in terms of the operating profit. The point is, you just can't use that measure as the basis of deciding how to give an incentive fee. Again, the city council annually reviews the measures, we bring them forward to you, we have full disclosure and transparency about Team San José's performance. Finding 4 of the 5 is budget for salaries and benefits paid to Team San José's employees have increased by 65%. On the first year of the news contract with additional funding for Team San José's executive team and that we should ensure that these costs are justified. Our response is that as staff for your consideration is we disagree with this partially, what was happening in the past was, Team San José's executive team was being funded out of the General Fund portion of undedicated T.O.T. funds that they receive. So there's an accounting in the budget in which those -- portion of those salaries weren't being charged to an expenditure account, they were just being reflected out of the contribution of T.O.T. to 536, and there were charges being allocated for this team to the annual General Fund subsidy that the -- which is a true subsidy that the council has approved to the convention and visitors bureau. As you recall on the last contract negotiation if direction was to combine CVB with Team San José so more of the salaries for the executive team were being charged to the operating account, and that was reflective of the fact that council applied the same budgetary cuts

to Convention and Visitors Bureau as you did to all other nonprofit organizations. It's also important just to note that according to Team San José in the '09-10 period they reduced internally their base salaries by 5% and benefits by 11%. So there was some belt-tightening at Team San José. The final finding which is the one that staff completely disagrees with, and we made an attempt to communicate with the grand jury to ensure that they had a better understanding of how this worked. But it really related to a misunderstanding of how the T.O.T. allocation works in terms of what's in the Muni code. Essentially the 10% T.O.T. is allocated with 4% of that coming to the General Fund. Of the remaining 6%, 3% goes to fund 536, for convention center operations, but also, in the opportunity to create a fund balance, that would give us if growing the opportunity to fund repair and replacement in the convention center. Then there's 1.5% that goes to the CVB. You've heard me talk about that before, in the context of how important those dollars may be to us when we move forward with an expansion program at the convention center. And then there's 1.5% that goes to the arts. Despite our best efforts to try to provide as much information and explanation to the grand jury, their finding just represents a misunderstanding in the fact that we have been -- we can usually document, we have only allocated the dollars that were supposed to go to the Team San José, the fund 536 operating account over the years, and in fact every year the council, as a part of the budget process, approves the right allocation. S this just a misunderstanding, it's unfortunate. And given that the grand jury report is out and finished, our best response is just to explain that that's not how that is done. So then in closure, I just want to bring you to where we are presently. As the council will recall, when we were before you earlier this year, we had concerns raised about an overexpenditure within the Team San José budget that occurred very shortly after the council approved that budget in June. We also had some other concerns that we brought forward to the council. The council heard those when we brought the earlier presentation forward on the grand jury report, and we received direction to move forward with a number of audits. Those audits are ongoing. And I'll just describe those, ones that are on the next page. There is the City Auditor's annual performance audit in which the auditor's office looks at the performance measures such as gross operating profit, return on investment, customer satisfaction. Based on the council direction the auditor is expanding the scope to address concerns about the recent overexpenditure and also, to take a look at other concerns that were identified by the city council. Council's already provided direction, to take a look at the declining operating results, and how that might impact the General Fund, as well as the loss of some recent contracts and the comparison of how our costs are to nearby competitors. In addition to that scope of performance audit, the director of finance is engaging

to see if Gini and O'Connell, our external auditor, to perform an agreed-upon procedure audit of operations. What this entails is evaluating Team San José's fiscal management of the convention and cultural facilities in accordance with the corrective plan of action that we provided in the notice of default. That was an earlier slide. I'll go back to that. But what is going to occur in this audit is an expanded testing of transactions of operating revenues and expense, including evaluation of legitimacy of expenditures in accordance with our management agreement. Just going back, the corrective action plan you will recall, we did provide some new controls over the ability of Team San José to access the convention facilities bank can. There is much more expenditure documentation now going to the director of finance and his team prior to checks being cut. So Mr. Mayor, in conclusion, those audits are expected to be done in mid November. I would ask Scott or Sharon Erickson to speak to their schedule. But at this point it's my understanding that there isn't anything we can report to you about the audits because that work is still ongoing. And so in conclusion, we recommend the response to the grand jury that we've put before you. We want to -- we think we needed to clear the record a bit on areas that the analysis was not in accord with the basic information that we have. We did and have identified new areas of concern, both with the Team San José operating mode and the management, since the completion of the grand jury process, that's what we brought to you. That's what we're looking at now. Those audits should provide additional information to assess the next steps, for the council's consideration. And we expect that information to be before you in November. That will line up fairly effectively with the -- our calendar to come back to you in December with the proposal on how we should proceed with expanding the convention center and the underlying plan of finance to make that convention center expansion a reality. Mr. Mayor, I'm prepared to answer questions or have the team chime in.

>> Mayor Reed: I think I'd like to have Scott and Sharon Erickson talk about the schedule for their audits and Scott's on deck. This being baseball season Scott's on deck, Sharon's in the box or in the hole, she'll tell me what it is. She'll be on next. Scott.

>> Scott Johnson: Thank you, Mr. Mayor. The agreed upon procedures audit that we've ask Macias, Gini & O'Connell, our external auditors to conduct. The plan is that that will be completed in mid-November, which is consistent with Ms. Erickson's report that she's doing in conjunction with the performance audit. I also want to

mention that Macias, Gini is currently in the process of completing the financial audit for Team San José, this is the annual ongoing financial audit of the city's convention and cultural facilities, and that will not be completed until the other two audits are completed. Depending, you know, which -- they are deferring completing that until we are real comfortable with any findings or anything else that may come out of the other two audits.

>> Sharon Erickson: And Sharon Erickson, City Auditor. Our current time schedule was to release tentatively November 15th to be heard by the Public Safety committee on November 22nd was what we were shooting for.

>> Mayor Reed: Okay. Thank you. I had a couple of questions and comments on the proposed response. First, on recommendation number 5, about splitting of the T.O.T. fund. If I'm remembering City Attorney's advice on previous discussions, it would take a vote of the people to change the allocation within the way we split the T.O.T. fund.

>> City Attorney Doyle: There are two parts of the T.O.T. There is a general tax and a special tax. This is the special tax portion and it requires a vote to change that.

>> Mayor Reed: Okay. The response correctly states that it's in the municipal code and we deal with it in the budget every year. I just would add that we can't just change it. Redoing ordinances every week. We can't just change them but it would require putting it to a vote to change that allocation percentages. I think that's a very important fact. And then, the other item is, while I think the staff has done a pretty good job on the response I'm not convinced that we might not want to change it after we get these audits. And I'd like to see the audit work before I sign off on a final version of a response to the grand jury. So I wonder, City Attorney, in terms of the time lines for us to get back to the grand jury, what flexibility do we have?

>> City Attorney Doyle: The provisions are governed by the penal code and normally you have 90 days from the date of the report. We did ask the court and the presiding judge granted us extension to this date to get the reply back. The code does contemplate that if you are looking for further analysis, in coming back with recommendations, that you can take as long as six months which would be around December 7th. I think

probably the November 30th meeting would be the safe bet to come back on, and I know that's a tight time frame given the dates that both Scott and Sharon have set on their audits. But we can work with the court on that to take advantage of the full six months, and if the council is uncomfortable sending anything at this point, or you can send something preliminarily, saying further response will follow. It's really a council direction.

>> Mayor Reed: Well, I think that's what we ought to do. Respond to the grand jury saying we've had a couple of hearings, we've done a lot of work we have two audits in place and when we get the audits done we'll have a full response. I'm just reluctant to give them a report then maybe a month later we decide something in that wasn't exactly right because we've got something in the audit and now we've got a response that needs to be corrected and we've got multiple documents and it might be nice to have a full version before we sends it on to the grand jury. Councilmember Oliverio.

>> Councilmember Oliverio: Thanks mayor, I think that makes sense. My question is what I want to ask is something to maybe influence if I can the audits that are going to be done by finance and the City Auditor. And that question would I like to have Dan Fenton answer, so if you could come down I'll ask the question. I think there was the big issue of the overexpenditure. And the idea of you know changing protocols and procedures but really giving the financial transparency that would enable everyone to feel more comfortable. And so my direct question is, Team San José manages their accounting in a software ERP or accounting software. Would Team San José be open to giving a license to the finance department for the City of San José so they could log in 24-7 and see whatever the balance is or whatever transactions have occurred, would that be okay?

>> Dan Fenton: Whoops, is it on? Dan Fenton, CEO of Team San José. Councilmember Oliverio, the answer is yes. And just so you know we're working very closely with the finance team as we speak on continuing to tighten up every month how we reconcile results and how we look at our respective reports. But in terms of access we would have no -- as a matter of fact would I -- we'd be very open to that type of access.

>> Councilmember Oliverio: Okay, thank you. And the reason I bring this up is we can have any procedure in the book, we can have them provide any report, any given period of time. But there is something nice about Scott, or

Scott's team, being able to log in any time and see what the balance is or what the latest expenditure is. And I think that just would be valuable from my viewpoint. And Scott, you tell me if that would be valuable for you.

>> Scott Johnson: Councilmember I agree that would be very valuable and if we could have the capability actually to download that information to our FMS because we do book the transactions every month. We work very closely as Dan mentioned with Team San José staff and I also want to remind the council that Team San José no longer has access to the bank accounts. We've limited their access to the bank accounts. They have to request transfers. We review the documentation now every month before we make those transfers so they no longer have access to the City's bank accounts.

>> Councilmember Oliverio: And one slight detail I'd add, that access would be view only, you wouldn't be able to edit, you would be able to see the transaction that are going on. Okay, thank you.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. The question is regarding to the recommendation 3. That says the current contract, we cannot base the incentive fee on the operating profit, but it has to be based on the revenue. My question is, do we have to give them incentive fee? Can we eliminate the incentive fee?

>> Paul Krutko: Councilmember Chu, as part of negotiated process and as part of direction we received from council in negotiating the agreement, that we received council direction to include an incentive fee. So clearly, if council wanted us to not have an incentive fee, as a part of an agreement, that could be something we would negotiate. But the current agreement that is in force now includes an incentive fee.

>> Councilmember Chu: Thank you very much. In the current agreement expire July 1st, 2012, right?

>> Paul Krutko: Yes, there are provisions in the agreement and Brian can help me with this, for termination for cause and termination for convenience. The termination for convenience happens at a certainty point and it's not in my brain Brian if you could help?

>> It's a five year agreement that -- it's a five year agreement for which we have the right to terminate beginning July 1st, 2012. So we can terminate for convenience which means for no stated default or any reason like that. Just if we wish to terminate we can terminate beginning July 1st, 2012 but the agreement actually runs through I think is it 2015, 14? Yeah, 2014.

>> Councilmember Chu: Thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I just like to second your thinking with accepting the response to the grand jury, if that has been presented. And also, would we be forwarding the results of the finance and the City Auditor to the grand jury as well? When they're due?

>> Mayor Reed: I would anticipate it would be included with our response about assuming we could get the whole package together.

>> Councilmember Pyle: So delay the response in one package. Well I'd like to make that motion and would also like to thank staff for all the work addressing this problem. This is a very, very difficult matter. And I hope that in the future, we can make our decisions in a little more transparent manner, and I do worry about any of this becoming a political situation, rather than a practical one. So looking for a second.

>> Councilmember Nguyen: Second.

>> Mayor Reed: So the motion is to respond to the grand jury within the time frame we've got, say we're working on it, we've got all this stuff had some hearings describe away we've done.

>> Paul Krutko: We'll work very closely with the City Attorney to make sure the response is handled properly.

>> City Attorney Doyle: Just for the record what I -- if this motion passes, what I would do is, I would send a letter to Judge Jacob Smays, the presiding judge, noting what the council's action was today and saying that that a further response would be forwarded by the end of November is what we anticipate, and request the court's indulgence.

>> Mayor Reed: Okay, Councilmember Liccardo.

>> Councilmember Liccardo: Thanks Mayor. Paul thank you for the presentation and I think we would agree that if grand jury report had its share of inaccuracies and false assumptions that I think led staff to conclude in many cases that they had to at least partially or totally disagree with conclusions. But it's fair to say too and I think four of the five responses are that the city partially disagrees, that also means that the city partially grace. And for sake of clarity, I think it would be helpful to ferret out just where the city does agree just so we know going forward and so there's no misperception. On finding 1, where it reads the city subsidized substantially higher than anticipated operating losses, again, the conclusion of the city was that you partially disagree. And I think most convention centers in the country, I think all except two, operate in a red, that is, they need some subsidy from the city. So that's not a shock. I think the issue is whether or not higher than anticipated the operating loss. And is it fair to say that the city has -- the Team San José's operating losses have each year exceeded their projections.

>> Paul Krutko: I mean, councilmember, I think we can point to examples where that has occurred. The question you asked is reflective of all of them over time. And I mean we could get back to you on that. The key element that I guess I would want to point out is that we can't lose sight of the fact that council would have been faced with different budgetary choices, had we met the targets that were in the original agreement. And what I mean by that, is as you know the council, this is ground we've covered many times but just for the sake of one more time. There

was a disagreement over how -- what numbers Team San José had to start with. And then how they made the projections going forward. But I guess the key point is just what happened in performance. And the fact is, council would be faced with different decisions, if we were -- if the operating revenues were closer to the operating expenditures. Because more of the money in 536 -- fund 536 excuse me could be used to invest in the convention center. The current proposal we have before you is we're going to have something on the order of $50 million in renovation included in this new package. If we had grown, if we had been able to grow fund 536 to a higher level, we would have been able to make some investments early on. Additionally, two years ago, when the economy was in a different circumstance, or maybe three, Scott, you have to remind me, we wanted to bring forward a budgetary proposal that would talk about funding Team San José and the CVB out of 536. And the General Fund subsidy, that's where I'm getting to your point about partially disagreeing or were we looking at, the grand jury looking at the right thing. Where there is a subsidy is in the expenditure of marketing dollars to provide convention marketing services. And that's a place where unlike 536, where that's -- you're in the box of the convention center operation, now you're in the General Fund world and the council can make completely different decisions about how to use those General Fund dollars.

>> Councilmember Liccardo: That comes up in finding 5. What I'm asking is a much simpler question which there are targets that have been set for operating losses and my understanding is every year the performance has been substantially worse than the target.

>> Paul Krutko: Sharon's going to help me with this.

>> Sharon Erickson: Yeah, the audit that we issued in January of 2010 showed that Team San José admits those operating targets, so it was on page 9 of that report we showed that they missed it by almost $900,000 the first year, $1.9 million the second and third years, $2 million the fourth year, and $4.6 million the fifth year. There was discussion in that, that the performance had improved since the city had run the convention center, but absolutely they had missed those targets. What we're going to be auditing -- what we're auditing now is whether or not those targets were hit for '9-10.

>> Councilmember Liccardo: Right, okay, and thank you Sharon. And to understand where the difference is made up. It comes out of -- fund 536 comes out of T.O.T, fair to say?

>> Paul Krutko: Right. And what was happening, just to amplify that a little further, is we were having a good performance under T.O.T. So the fund balance -- we were showing operating losses, but the fund balance is growing, both because shows and events are coming to the downtown, but you know, the council has heard me say before that only 10% of our T.O.T. revenue comes from the downtown convention hotels. 90% comes from general hotel occupancy in the entire city. So we had -- you know the economy was -- we saw some charts recently, was three years ago we were having increasing job levels. Right? So that's why the fund balance was growing.

>> Councilmember Liccardo: Okay, just in terms of finding one at least there's some agreement there that the operating losses have exceeded targets every year. The -- on finding 2, the finding is the significant portion of the operating losses is attributed to the cost of salaries. And this has to do with the right-sizing issue. Could you describe, Paul, what the relevant position was of the city, that is City Manager's office and budget office and Team San José in terms of reducing overhead at Team San José and reducing the number of positions?

>> Paul Krutko: Yeah, I can, councilmember, thank you for the question. We, in January 2009, we brought forward to you a new agreement with Team San José. That agreement specifies that we have to have -- they have to make a budget proposal by the 1st of February. In 2009, despite our best efforts to get that budget proposal, Team San José was, the best way to characterize it, was they were reluctant to propose cuts to deal with this glide path issue. And so what that resulted in is that the budget office, working with my team and myself, produced MBA number 2009. We actually produced a budget for Team San José, put it in the packet and that's what council approved. We then, subsequently, there was a need for performance measures. And you'll recall the performance measures were supposed to be included as a part of the budget package, as well. We couldn't come to an agreement with Team San José, and so that was approved outside the normal budget process and council didn't approve those performance measures for this year until November of '09. We've started budget discussions this year. So I'm talking about '09. We discussed budget this year. Again, the main proposals for dealing with

staffing costs came from the city budgetary team and our team about that we needed to make these reductions or we would burn through the fund balance.

>> Councilmember Liccardo: And by that you are referring to the fund 536.

>> Paul Krutko: Right. And then if we burned through that, we would be faced with having to come to you and ask for General Fund support.

>> Councilmember Liccardo: Right. As we look at the 71 positions, as I understand it the majority of those positions were actually eliminated sometime in early 2010, if I'm not mistaken.

>> Paul Krutko: There were two tranches, councilmember. We had, as a part of the budget we adopted for '09-10 we eliminated 29.75 positions. And then in 2011, another 42 positions were eliminated.

>> Councilmember Liccardo: Okay, so as we look at convention center business, it's dependent in many ways on the national economy, is that fair to say?

>> Paul Krutko: Yes.

>> Councilmember Liccardo: So when economists tell us the recession starts sometime in late 2007, I understand locally we were feeling a bit later than that. But nationally, certainly people were feeling it in late 2007. Between the time the recession started and the majority of the layoffs took hold, 42 positions that was some two and a half years, is that fair?

>> Paul Krutko: Councilmember, that's correct on the time line and you're also correct on the fact that our recessionary impacts were later here. But those were largely in our technology sector, businesses not in our visitor businesses. So --

>> Councilmember Liccardo: Right.

>> Paul Krutko: I think we saw downturn in business here much earlier in visitors and in travel and in the kind of meeting business. The main job loss we saw on the technology sector happened in January of '09.

>> Councilmember Liccardo: Okay just to understand then at least I'm finding there are portions that we agree with the grand jury, the city does. Recommendation 3 on the incentive fees I understand that we have performance measures that are tied to net revenues. We can't have incentive fees tide to knelt revenues because of the internal revenue code. I assume if Team San José were not a 501(c)3, that is, if we were dealing with an entity that was not a 501(c)3, we not be restricted in terms of being able to use net revenues as a result of --

>> Paul Krutko: I'll let Scott, that's beyond my expertise. I'll let Scott --

>> Scott Johnson: Councilmember, Scott Johnson, director of finance. The reason why we have these limitations is because of the funding for the convention center. We issued tax exempt bonds, so due to the fact that we issued tax exempt bonds we have what's commonly called private activity limitations so to the extent that private companies have an opportunity to earn a profit from the issuance of tax exempt bonds we have certain limitations with regard to how much profit they can earn.

>> Councilmember Liccardo: The limits is on us not on Team San José?

>> Scott Johnson: It is on us because of the debt we issued, right.

>> Councilmember Liccardo: Thanks for clarifying that. Then the city's position about the net revenue portion, of the performs measure, my recollection is city staff is actually pushing for that to be a much larger share of the overall performance measure, and I think council or council majority actually essentially said no, we want economic measures to be the performance measure or at least have a heavier weight, is that fair?

>> Paul Krutko: Council, that's correct. The staff recommendation was to emphasize operating profit and the operation of the center. That was modified during the council decision.

>> Councilmember Liccardo: Okay, thanks Paul. And then quickly then on finding 4. The increase on personnel cost, I know the city's response attributes a lot of this personnel cost increase to bringing food and beverage in-house. Now I guess an important question here is what the net effect of that decision was, that is, do we in addition to the additional cost that we now have, more revenues than cost or less revenues than cost as a result, that is what is the net revenue impact. I assume that's something Sharon is looking into. I doubt you have an answer to that question but I thought I'd ask whether anyone happened to know the answer.

>> Sharon Erickson: You're correct that's something we're looking into.

>> Councilmember Liccardo: Okay we'll move on then. Then finally finding 5, I think this is an important one. City disagrees with the finding of the grand jury. And obviously there are some mistaken assumptions the grand jury has about how T.O.T. moves. I'm sorry, T.O.T. revenue moves. But I think you said earlier Paul that that clearly both the council and city staff had some expectations about how fund 536 would be built up over the years and that we would need fund 536 to pay for capital replacement, to give us the glide path when the convention center was under construction and perhaps ultimately to be a source of marketing dollars for the Convention and Visitors Bureau, is that fair?

>> Paul Krutko: That's fair. Our goal ultimately with operations and in terms of an expanded renovated center is to try to create a system in which, with the additional 4% that the hoteliers have agreed to that we create for convention operations a self-funding mechanism. And there isn't any General Fund money going from that part of the City's budget into either maintaining or repairing or even marketing the center. That's our ultimate goal. As a team on the city side.

>> Councilmember Liccardo: Okay. So then the problem here, as I understand it is that ultimately fund 536 has been depleted greatly because of the need to cover the operating losses, that is, the greater than expected operating losses?

>> Paul Krutko: I think the point I would share with the councilmember and all the council is that we have had over the last two to three years, a sort of best way to describe it, a journey to try to figure out the methodology and approach to expand the convention center. You recall that it, you know and that's had an impact on levels of business and how to contract for and to do things. We also had the circumstance at the beginning of the year where there was a labor dispute ongoing that I think in all fairness was disruptive in terms of our ability to attract business and do those kinds of things. Nonetheless what we've identified is where we need to be at the ends of the expansion and to the credit of the team that helps me, Scott and Lee and Eric Balmora from budget when we see we're off the glide path we immediately say to Team San José, we need to make adjustments to the budget so we stay there, because we wanted to come out of this opening the center with a fund balance of about $1.5 million, is the figure we were shooting for, Eric's nodding his head. That's what we were shooting for, to make sure we have that cushion at that point.

>> Councilmember Liccardo: Understand we have 3.1 million. My concern is that we're dealing with the realities of today, for instance I understand we've got fire watch over at the CPA, because of problems with fire system over there. Where is that money to fix that fire system going to come from?

>> Paul Krutko: Councilmember, the one thing I -- before I answer that let me also reflect on the presentation Jennifer Maguire just made. We have seen a bit of an uptick in overall TOT revenues so that gives us a little more comfort. In fact that's what she was reflecting on the revenue picture for fund 536. We had the concern for overexpenditure, yes more revenue was coming in but it was coming in from T.O.T. side in general. In terms of the fire watch it's something we're very concerned about at the CPA. I have had the opportunity to brief the City Manager and assistant City Manager. We think we need to move forward and correct that problem. We're going to ask, there is a fund that is been built up, by the operators of the theaters, the theater preservation fund. We tapped that once to do work at the civic. It's got a balance that's increased I think it's $180,000 about, the work we

need is $450,000. We have a sinking fund reserve that we like to keep at $1 million but we think it's appropriate at this time, we're going to obviously bring it forward to council and have council agree with it but our recommendation would be to tap that reserve, we don't think it's a good situation at a venue in which we're having a number of theater performances to have the fire system in that condition. So we would probably soon be bringing forward a recommendation if that's the right format, I'm not sure that's the right format, under the manager's signature authority we may be able to proceed with it directly. But I just had that conversation with the City Manager in the last couple of days.

>> Councilmember Liccardo: The point is we're going to other funds I understand to repair facilities that ideally we like to have 536 for. And I guess the last question I'll ask and I promise I'll be done, my understanding is we've already dipped in the General Fund to pay for marketing other expenses, you mentioned executive salaries as well. Do you have any sense over the temp of the contract how much General Fund money has been contributed?

>> Paul Krutko: You did ask the question earlier in the day, and we did collect the information. Since 2004, the General Fund has contributed $13.1 million to the CVB. So that's the General Fund dollars that went to the CVB for marketing the convention center. At its height it was $2.1 million. Last year you remember we applied the same -- we have been applying the same cuts to other nonprofit organizations. This year it is estimated that it will be at $1.1 million. So it's declined, but it's declined reflective of the cuts we have made to other nonprofits.

>> Councilmember Liccardo: Thanks, Paul. The reason I bring all this out, obviously we disagree where the grand jury recommendation as the city does but it seems to me there's reason to be concerned when we're investing $13 million of General Fund money in what we'd hope to be a responsibility picked up by 536 and because of the precarious position of 536 we're also look to other funds to pay for capital replacement and other expenditures. So I think we have good reinforce to be concerned. Thank you.

>> Mayor Reed: I have some requests from the philanthropic speak. I'll take that testimony now. Rob Thomas and Mike Fox, junior. Please come down.

>> Good afternoon. Thank you for allowing me to speak this afternoon to the city council. I wanted to represent myself. I'm the general manager of the Marriott Hotel here in Downtown San José. I had the opportunity to speak to the owners of our facility at length on Friday about the upcoming audits and ongoing audits about Team San José and I'm able to reflect their position as well as my own. As you know, Team San José is made up of business labor hotels and arts all coming together for one common goal, bringing visitors and their spending to San José. I feel that there is a significant alignment, we attend many meetings, in fact our sales meetings are twice a week, with the hoteliers, the general managers as well as the directors of sales and marketing comb together and figure out what it takes to drive business into San José. We plan, we align and I think we execute very well. Along with that level of engagement we have the opportunity to speak to any concerns we have in a very open fashion with the management of Team San José and the convention center specifically and I feel that our concerns are heard and addressed in a timely manner. Our owner invested just over $100 million in building this hotel, seven years ago. And it was under the assumption that the hotel would have a very close relationship with convention center, in filling those hotel rooms. We have 500 hotel rooms to fill on a regular basis and a lot of that revenue and that volume does come through the working relationship with the convention center and the Team San José team so I wanted to stop by today to offer my support to the structure of the team, and as the audits continue to and are ongoing we're very interested with the results and also committed to improving the results. Thank you.

>> Mayor Reed: Mike fox, junior.

>> Mayor Reed, councilmembers thank you for allowing me to address you. I wanted to introduce you, myself today, as the new chair of the finance committee for Team San José. I took that role over in July. And I'm also the treasurer of Team San José. I wanted to let you know that the finance committee does review the financials on a monthly basis, and that we work with the city finance and budget office to evaluate the budget and to monitor the operation. In fact the finance director for the City of San José has been attending our monthly meetings. Also, I wanted to let you know that the board is working closely with management to ensure that we have compliance, especially when it comes to the operational and the budgetary concerns that the city has. You know, we look

forward to our continued mutual success with Team San José, and the City of San José. I think it's been successful up to this point. And I think with increased transparency, that the board is reviewing and making sure that we have, that going forward we should have a very beneficial partnership together. Thank you.

>> Mayor Reed: That concludes the public testimony. I wanted to clarify the motion, so we get the motion is approved, staff will bring us back a modified staff report as maybe appropriate after the audits, along with the audits in late November to early December, according to the city attorney's --

>> Paul Krutko: That's correct, mayor.

>> Mayor Reed: But in the interim we'll respond to the grand jury and let them know what we're doing.

>> Paul Krutko: Working with Rick on the correct response.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: I'll save most of my comments for when we return to the discussion in December after the audit. But I just wanted to state that as the liaison obviously I have been at the recent board meetings and had lots of discussions with Team San José and the individual people, both on the finance committees and the board and the staff, just -- I don't think we're required disclosures here, but just to put it out. Lots of conversations with lots of people via lots of different methods of communication about this.

>> Mayor Reed: All right, we have a motion on the floor. Further discussion? All in favor? Opposed? None opposed, that's approved. We'll now move to item 3.5, ordinances clarifying and correcting the definitions of compensation and final compensation of the Police and Fire retirement plans.

>> Councilmember Constant: I'll make a motion to approve and I have a comment.

>> Mayor Reed: Okay, we have a motion to approve. Councilmember Constant. Did I get a second, we do have a second, Councilmember Herrera. Okay, has the floor.

>> Councilmember Constant: Thank you. I just wanted to thank staff for getting on this one rather quickly. This was a situation that came up with a change in laws and some conflicts between what the state and the feds and the local governments were doing. And it was the ball had started going down a path, and fortunately, we were able to catch it rather quickly and come to a resolution that most importantly doesn't create any additional unfunded liabilities on our pension funds, which was a path we were unfortunately on a collision course with. So I know that, you know, once I had heard about it and talked to the City Manager's office, they had just found out about it, and they were able to really get together with the City Attorney and make this correction. It's a necessary correction not only for the employees but for the health of the funds. So I just urge all my colleagues to support.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Just a quick question for Rick. I haven't read labor section 4850. But when you read the memo, it suggests at that time city attorney's office has taken -- originally took a contrary position. Then there was a meeting on September 9th with various representatives, with CAO and employee relations and POA and local 230. But it's not clear to me, what it was that changed anyone's mind, in the city attorney's office. In other words, you never see a sentence that says well we agreed with them because X, Y or Z. And I'm just trying to understand how we got from here to there.

>> City Attorney Doyle: I don't know if anybody's mind was changed. I think we agreed on the solution, which was this ordinance to clarify the definition so this would be pensionable. That really was the issue from my standpoint and Mollie is not here today so I'd have to follow up with her. I would have to say, 4850, Councilmember Constant has just alluded to it. There was confusion over the years as to whether or not these moneys were tax exempt when they were paid as disability. And without guidance from the state, you know, under federal law there was some questions. So there at least is clarity both on that, and now we're trying to make it clear under our own municipal code that this is pensionable.

>> Councilmember Liccardo: Okay and so your interpretation of the code is consistently with everyone else's?

>> City Attorney Doyle: I think it is and this is a solution that we all agree upon.

>> Councilmember Liccardo: Great.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Just one sentence in here that did the whole thing for me, and that is that the proposed ordinance will eliminate what is essentially a drafting error. So this you still agree with what you wrote Rick? That says it all, thank you.

>> Mayor Reed: I have a question about compensation. We're talking about 108% of compensation, final compensation, but when I look at the language of final compensation, it doesn't tell me what is compensation. Which is a conclusion. And city recently posted on the City's Web page compensation pursuant to Supreme Court rules and public records act requests, and in looking at that and trying to apply this ordinance, to understand what might happen, with the police and fire pension calculations it wasn't clear to me how this operationally would work. So if I could Alex Gurza is here. If you look at that list, probably four out of the top 10 compensated people in the city are battalion chiefs according to that list. So I'm looking at the top one. Total cash compensation, $297,000 a year. And this is for '09. Made up of base pave $164,000, overtime of $114,000, and other cash compensation of $19,000. So which of those forms of compensation would be included in the definition of compensation which is subject to the limit that we're talking about today?

>> Alex Gurza: Good afternoon, Alex Gurza director of employee relations. If I could Mayor Reed I think a point of clarification is, there are two ordinances in front of you that are completely unrelated to each other. The first one is the one Councilmember Constant and Liccardo were referring to which is the 4850 issue. And that is to now correct that issue so we know what's pensionable and correction are going to be made. Mayor Reed the one

you're talking about was the one that's referred to that was a drafting error that came to the attention of the Police and Fire retirement board. And the attorneys office went back and researched it and concluded that it was an error in drafting. To answer your question directly Mayor Reed compensation is defined elsewhere in the code and one of the things that is not a feature in our plans, that is a feature in some other plans is things that cause pension spiking like overtime. So overtime in our plan, either of our plans are not considered compensation for the purposes of calculating retirement benefits. So in the Police and Fire plan it is defined very specifically as base pay and then certain enumerated premium pays are considered compensation for the purpose of the determining an employee's pension. For example in the police department, post pay and other types of specific premium pay. So the example of the employee you mentioned with the large amount of overtime, overtime would not be used in calculating the pension benefits.

>> Mayor Reed: Looking at this chart here, 163,000, 164,000 of base pay if you round it. So would the pension at the top be 90% of that number or --

>> Alex Gurza: It would be 90% of that plus more. So in other words you mentioned a battalion chief. So in the case of a battalion chief when determining the pension they would look at the single highest year that would include base pay, it would include premium pays such as anti-terror pay which is 2% of their pay. It would include EMT pay and I may be missing holiday in lieu pay. All of those things serve to do it. So it would be 90% of the base pay plus those other items. It would not include however overtime pay.

>> Mayor Reed: But whatever is in that is limited by this formula we just talked about to 108% of last year?

>> Alex Gurza: Yes, the last year, again including those items that I mentioned. It would be, if somebody had a 30 year career for example they would be entitled to 90% of that -- of those items that I mentioned. So limited to 108% and that's intended to try to put a limit on sort of the promotions in the final year. So let's say if somebody were to be promoted in the final year of service and then their pension was then for a lifetime on that, the 108% limit says that single highest year, your last year, can't be more than 108% of the year prior. So it tries to limit that big promotion at the end that will boost somebody's pension.

>> Mayor Reed: So if a battalion chief is making $164,000 in their last year and they had been promoted to battalion chief from, let's say, captain, their pension would be based on 108% of what they were making as a captain the year before?

>> Alex Gurza: Well, it would be 108%, so let's say you have your final year, your final 12 months here. What you look at is the 12 months preceding that last 12 months, and it can't be more than 108%. Yes, a big promotion like captain to battalion chief they would receive part of that if they retired only after a year, so it would be 108 -- so it would be limited to that 108%. However if somebody -- because we calculate our final average salary on the highest year instead of for example highest three years, as long as somebody works two years under the promoted to higher rank they would then have the benefit of the whole higher salary when calculating their pension.

>> Mayor Reed: I'm looking at the captain's number here, the highest paid captain I think on this list, $130,000 a year, if promoted to battalion chief it looks like it goes to $164,000 a year. They serve two years in battalion chief then it really doesn't matter.

>> Alex Gurza: Correct.

>> Mayor Reed: If they were to retire just after they got protect promoted to battalion chief, they would be constrained by the 138,000 number plus 90%?

>> Alex Gurza: That would be correct.

>> Mayor Reed: 90% of 108% of that.

>> Alex Gurza: Plus the other I mentioned.

>> Mayor Reed: Plus the others.

>> Alex Gurza: The other premium pays that are pensionable.

>> Mayor Reed: The other thing about this chart, total cash compensation, so total cash compensation plus whatever we pay for retirement and health care that cost the cities not included in total cash compensation, this is cash compensation viewed by the employee?

>> Alex Gurza: Absolutely right, Mayor Reed. Only your W-2 what you received in cash from the city. So what's not included is as you mentioned contributions the city makes into the retirement system, health care benefit and any other benefit which is not paid in cash is not part of what's on that list that you're referring to.

>> Mayor Reed: Okay, thank you, that was all my questions on it. And we have a motion on the floor. There were two items, I wasn't clear the maker of the motion was on both items. Motion is on both items. Further discussion? All in favor? Opposed, none opposed, that's approved. Item 4.2, some actions related to the issuance of bonds by the California enterprise development authority. This was a quick turn-around on some action that we had previously regarding the SunPower Corporation trying to expand their headquarters in North San José. I know we have somebody from SunPower here. I don't think there's a staff presentation on this. So I'll take the public testimony.

>> Paul Krutko: No, mayor there's not.

>> Mayor Reed: I'll take the public testimony. Kerry Smith.

>> Good afternoon, Mr. Mayor, members of the city council and city staff, my name is Carey Smith. I'm director of regulatory affairs with SunPower corporation. On behalf of our CEO, Tom Warner, our board of directors, our employees and our shareholders, I'd like to thank you today for approving this bond on our behalf. At SunPower we continue to be very inspired by the political leadership of San José. Especially Mayor Reed's Green Vision

which we view as an exciting framework for the future urban development in our state. So many people like to think of San José as the capital of technology. And we can't think of any other better place than to locate our new headquarters here in the City of San José. I'd like to thank you very much for this consideration.

>> Mayor Reed: Thank you very much. We're pleased to have some help from the state of California. It doesn't happen very often, so it's notable. Because the state of California is -- California economic development authority is the one that will issue the bonds, and that will be helpful to SunPower. We're required to have some hearings. So this is the completion of that hearing process. I think we want to urge the state to keep moving, would be a good thing to get this business expanded in San José.

>> Paul Krutko: Mr. Mayor if I could just one important of clarification.

>> Mayor Reed: Paul construct.

>> Paul Krutko: These are dollars I want to give the state as much credit as we can but this is recovery act dollars that Obama administration put forward to provide this kind of opportunity. The state's reallocating but we're pleased that the federal government made this choice as well.

>> Mayor Reed: We certainly want to give credit where credit is due. We thank both the state government and the federal government, that is even more remarkable to have them working together to help us with a business expansion. That's a good thing. And I wanted to thank the staff for getting this turned around very quickly and getting it processed and having the hearings and getting us here today. Councilmember Liccardo.

>> Councilmember Liccardo: I just wanted to thank SunPower of course but also to thank Paul and Nancy Kline and their team for putting us in this position. This was a very long conversation, negotiation of sorts, and I'm just glad we came out with keeping SunPower here at home. I'll defer to Councilmember Chu since it's in his district.

>> Mayor Reed: Councilmember Chu would you like to make the motion?

>> Councilmember Chu: I'll be happy to move the item.

>> Councilmember Oliverio: Second.

>> Mayor Reed: Motion is to approve, all in favor, opposed, none opposed, that's approved. Before we take up item 4.3 which I think will be a long conversation about the 2040 conversation, I think I'll take up item 4.4, which is a simple rezoning of some property, we can get that out of the way on the land use matters, item 4 much 4, is a rezoning of real property located opened the Northwest side of Saratoga Avenue. We have a motion to approve. I think the applicant is going to waive the five minutes of presentation. We have no requests from the public to speak. All in favor? Opposed? None opposed, this is that's approved. Now we'll take up the general plan level discussion with item 4.3, our envision 2040 task force status report. There will be a report before the staff gets involved in the report I want to thank our three councilmembers who have served on this. This has been long and hard. And interminable it seems but I think we're getting close to the end so Councilmember Liccardo, Councilmember Chirco, Vice Mayor Chirco and Councilmember Oliverio have been diligent in working on this as has the staff. So we'll hear from the staff at this point.

>> Thank you, good afternoon council and mayor. I'm Susan Walton, I'm the principal planner in long range planning in Planning, Building, and Code Enforcement. We've reached another milestone in our general plan update process. We've released the general plan text document out to the public and we thought this would be a good opportunity to come back to the council to focus on the themes in this general plan document and to highlight the future steps in our process to bring this update plan to the council for approval in June 2011. We also want to highlight a process that staff is recommending to deal with existing pending general plan amendments and any new proposals that we might be receiving in the next few months. So just to take a look at our draft plan, our draft plan is now in a complete document form, and over the past years the task force and community have come to key themes which have emerged as the essence of this plan. For the San José moving toward 2040 based on community values. So here are the ten plan characteristics and we will move quickly through those. One is community based planning. This has been a primary concept from the very beginning. The

community has been heavily engaged with the task force. Staff has worked through 43 now I think that's 44 task force meetings. Seven large community meetings and workshops and involvements of over 4,000 members of our public and stakeholder groups online in those efforts. There's continuing discussion happening with the task force and refinement of the draft plan. The next task force meeting is this next Monday. If people want to come join us for that and the task force discussion will continue with the community over the next several weeks into November to refine draft policies. The community based planning concept early on strengthened and identified some of the planning principles the task force had early identified. You will see some key elements there in the bold: Urban villages, fiscal stability, transit ridership, environmental leadership and economic development. So those were early identified by the task force, reinforced with community online survey results and are now embodied in the plan. A second concept is that San José should move boldly to be a regional employment center. We want to do this to support fiscal stability and we want to work to increase our share of the county's jobs. You'll see the number in the middle. There's more of an increase in the blue bar for jobs than we're promoting in the brown bar for residential development. So we are moving to try increase our jobs per employed resident, worker, to a robust 1.3 jobs for each worker here in San José which are is a considerable shift from today's .8 or less than one job per worker in San José. This will enhance San José's leadership role in California and in the United States. Another concept, this is just to identify that we're intensifying existing employment lands and we're focusing some of the intensity on our transit stops, particularly BART and the future high speed rail, we hope to be importing workers into San José as opposed to the current situation, we have fewer workers employed here during the day than sleeping here at night. Fiscally sustainable city. This is a real theme coming out of the community, coming out of stakeholder groups, coming out of the city staff. We want to promote economic development and jobs, we want to improve our incoming revenues and build on the success with the Green Vision and sustainability, and measuring that sustainability and ongoing check-ins with the council. Focusing growth. The focused growth plan, the council endorsed the growth areas concept en matte back in 2009 and recently, this April, April 2010, the preferred land use plan was adopted that was built upon a focused growth plan. So that residential development would be in these targeted areas and would be -- there would be a limited amount of additional infill into our existing communities. So this focused growth supports our urban growth boundary. It focuses our efforts on transit, and again, the council has already committed that we won't plan for additional residential growth in mid Coyote valley or the Almaden valley urban reserves in the time frame of this

general plan and this general plan does not recommend any increases in the urban growth boundary area. The plan puts our growth near villages corridors and hubs. BART, high speed rail, bus rapid transit light rail and this maximizes the use of the transit system and reduces the dependency on automobiles. We'd like to have streetscapes for people, a real buzz phrase in the task force, and the community is to plan for people not just cars. So the streetscape plans it promotes complete streets, comfort zones for biking, pedestrians, people with strollers, people in wheelchairs, access, provides good building toward an aging population. Provides for healthy communities. Destination downtown, this is a key employment and housing district. It's also a cultural identity. We want to support the new efforts of the high speed rail and the potential for an entertainment center on the west side of our downtown, building on the ballpark and the arena and perhaps entertainment uses as a regional draw and may be a statewide draw in that area. Concept: Plan and maintain the green line, protecting the open space, lot of emphasis in reinforcing that green line, this plan does that. Makes it more and more clear where the line is. The intent is to designate the slope and the UGB on the map and less flexibility or less case by case determination of where it goes. We have the technology. This general plan land use diagram provides for that. Environmental stewardship. The City of San José has been out there already with the Green Vision and we've had several successful years of monitoring our progress towards those goals. This builds on that and expands it and we want to be a leader in California, the United States and the world and build on that concept of measuring sustainability with returning to the council. And last plan concept is to design for a healthy community. This is coming out of the other goals that we have. We want to support the physical health of San José's community and we want to provide for more of the services and day-to-day needs of our residents in proximity of where they live and work so that more of their trips can be by bicycle and on foot rather than using automobiles. So those are the light ten themes of the plan. I hope all of you got copies to your offices and are perhaps reading it in your free time. We now move to the pending general plan amendments issue which staff was also recommending a process for. Staff is very stressing we should resolve the pending amendments in the time frame that we would be bringing this general plan to the council for decision. So we have identified 19 pending general plan amendments. We've sort of sorted those, the details are in the staff report, and staff's here to answer questions. Many of them, we are able to find a way to incorporate them within the general plan update. So there are several that are consistent with the direction the plan has been going, that the council has endorsed. That the environmental process for the update can be handling those amendments as well. Others are

slated to be brought to the council this December 7th which is the fall hearings for 2010. At which time we'll get decisions on those proposals. Staff is proposing a deadline for additional amendment requests. We've been having ongoing conversations with various property owners and other interested parties. We're recommending November 15th, that's a Monday as a deadline for new amendment requests. We feel like that gives staff time to work with those applicants in their environmental review process so that those amendment requests to come forward in 2010 in June with the general plan document. And just to highlight the future general plan hearings are scheduled and on track still for June 2011, and 20th, representing that that will be an enormous investment of staff task force and community time we would be recommending limited subsequent major revisions to the new general plan for some time. And staff is available to answer questions.

>> Mayor Reed: Thank you. I first want to reiterate my thanks to councilmembers who have served on this and already know all the answers to all these questions, because you've already put in the time on the meetings but this is a chance for the rest of the council to catch up on a couple of things and including me, who since I don't get to go to those meetings either. I had a couple of questions. First, this I think has been described as a jobs plan. Because we're trying to hard to get to the 1.3 jobs per worker instead of .8 jobs per worker. I think if we get to 1.3 we'll still be last in the county won't we or will we get ahead of somebody?

>> Joe Horwedel: I don't think we'll be last but we'll be in a better spot than we are today.

>> Mayor Reed: We'll certainly be in a better spot --

>> Joe Horwedel: If we were like the cities on the peninsula like 2 jobs or 2 and a half, then we really would be enviable.

>> Mayor Reed: We're not asking a lot, but it's an enormous effort. It's not a lot in -- compared to the rest of the county, but it's a huge step for us to get into that jobs-housing balance, because I know we were talking about it on Horizon 2000, when I first served on general plan task force and it's been one of our goals since. On a related question to that, how do we ensure, with phasing and otherwise, that we don't get all of the housing and none of

the jobs, as has happened at other times, how do we phase in the elements of this plan, how do we implement it to make sure we get the jobs and not just all of the housing?

>> Joe Horwedel: Mr. Mayor, that is I think one of the biggest questions that the task force has grappled with, once we picked the target of 1.3 jobs to employed resident, the state housing law is very rigorous in how it sets out to prevent cities from discouraging housing. And we have spent a lot of time trying to come up with horizons, and you'll see that in our draft plan of when we will essentially open up these villages to allow housing to occur as opposed to allowing jobs to occur. Our thought was to retain when we would allow sites to have a general plan that would allow mixed use as the way to do phasing. It does not have a hard trigger that says that we need to achieve certain amount of job growth to open those up but it does build some prescriptive policies that says that the council before they consider opening up villages for mixed use that they should you know look at the jobs success in the city. Are we achieving our goals and if not to slow down on opening those up. It does not have an automatic date that we would start a noticed. The one thing that really the task force has talked about and that would fit to the concern you're raising Mr. Mayor is the first horizon has I think 90,000 housing units in it. The vast majority of the housing that can happen in the plan is already in phase 1 and that's reflective of our current general plan today has 67,000 I think is the housing, 67,000 housing units already in our current general plan that are essentially in phase 1 or horizon 1. It is one that we're continuing to talk with the task force about how to put some good implementation goals in there and as we come back with the draft plan that is one of the things that I really would ask the councilmembers and the community to really look at the implementation section because for everything we do in all the other parts of the plan, if we really don't have good implementation policies, and criteria in there, it's really a nice plan that looks good on the shelf but it won't help us in what we need do.

>> Mayor Reed: And another question about the outreach. I know when the staff works the North San José plan which I think was a 2040 plan of some kind as well, that did you a lot of presentation to groups and meetings beyond the staff, and even though we have a lot of people engaged in this process in the task force, there are representatives of some organizations, do you think it would be worthwhile to go on the road a little bit to present now that you have this document to make a presentation to groups of people particularly interested in the folks who will show up at the last month and say I didn't hear about this what are you doing, you're affecting my

property or, it's hard to get people to pay attention until the end and I think having some a road show effort could be helpful in that regard. I don't know what you have planned between now and June.

>> Laurel Prevetti: Thank you, Mr. Mayor, Laurel Prevetti, assistant director for Planning, Building, and Code Enforcement. Thank you very much for the question. We are in fact working with the task force members themselves as ambassadors for this plan. We have been talking with them about which groups they would like to talk with, we would also welcome members of our city council as well as you Mr. Mayor to join us in our effort to reach out to our downtown rotary as well as the business community as many others. Several of us have already spoken tom business groups, we're continuing to talk with our developer round table, and others. So we've got a long list of groups that need presentations and we welcome all of you to join us, so that way we can really be talking as one city, in terms of our aspirations for our future.

>> Mayor Reed: A couple of issues on timing. June 2011, as far as I'm concerned does not include the last meeting in June. Be better to do it the first week in June, I know what the schedule looks in June, the first meeting is better than the last meeting in June to try to get something done. One thing that would be interesting is whether or not this general plan will last as long as it took to create it. Before we start changing. And I'd like for staff to talk a little bit about what they think we ought to do around amendments to the plan because we haven't gotten a long time to get it in place, we'll adopt it in June and then I don't want to see a whole series of amendments filed a couple of weeks later to start changing it. How do you think we ought to handle that?

>> Joe Horwedel: Thank you, Mr. Mayor. We have spent three years now work on the draft plan and really grounding the policies look at the land use diagram. Staff has been through the city with a pretty fine tooth comb, looking at the color on the map, we are spending time now on all of the text of the plan. My hope is that we go through and really look at, that the best thing we could do after adopting this plan is to essentially say we're not going to go through and amend the plan for a year, ideally two years, because I think just the discipline of starting with that philosophy puts more pressure on people to look at the plan now and not treat it as well, it looks good but I'm really not going to spend time and think it through and if something comes up we can amend it in a month or two or six months. The general plan is a really important document for cities and in some ways because we

were doing amendments four times a year we stopped thinking of the general plan as this vision document it became more this procedural document. I would really like for us as a city to go back to thinking about the general plan as that vision and it's one that we're really committed to the outcome. And if there's challenges, instead of starting with what's amended, we should go back to why, you know, of what we're trying to achieve and why can't we achieve that? And so I think starting with that discipline, with the new adoption of the plan, I think is an important part of reflecting the commitment that the task force has spent for three years.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. I have enjoyed my three years with my colleagues as the general plan task force. It's been fun and I certainly hope whoever is the next mayor doesn't call me until 2020 to serve on the next one. First my criticism of the plan, I've always said along I felt the aggregate number of housing is higher than I would like to see, but I understand that the General Plan came as a consensus to come to a number. I'll still think it should be smaller, but I'm happy to see it smaller than the unrealistic number from ABAG. When it comes to the -- how we manage to keep the jobs, I think it's indicative on us as councilmembers just to not simply convert land every time we have it before us. We've done it even still and we have to not keep those false promises that we are often given by those in the development community, that will promise a job at some point but it never comes. So I think we inevitably have to be tougher if we want to even increase that ratio, it's down to us and as much as the general plan as we know we can vote against it and I certainly hope we will remember that as these proposals come forward. The general plan 2040 offers a great opportunity to actually do density right, meaning transit oriented villages that we actually create where we're doing it so it enables us to have more pedestrian friendly walkability type of areas that people want understanding that's going to conflict when we bring these proposals forward. Because someone in whatever neighborhood's going to be fearful of density or parking ratio, things of that matter. They maybe fearful of height. But you know what? I don't get open space and parks unless I maximize each parcel and we don't get the economic efficiencies of building within the city infrastructure by doing that. So this general plan does set us in that good area that we're not going to build out Coyote and Almaden reserve, we're going to build out the center of our city and the transit hubs and all those kinds of things. I think it's imperative too that we have no amendments to this general plan for a certain amount of

time. There is no way else you're going to get some of these folks to pay attention to the process if they feel that they can just do something three months later, so I think that's important. So I certainly want to make a motion to move the staff recommendation, the entire staff recommendation forward. You know what, let me defer it. Councilmember Liccardo is the chair and I'd like to -- okay, fair enough. So anyway that would be my motion. So thank you.

>> Mayor Reed: And a second from Councilmember Liccardo. All right. Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. Thank you very much for the question regarding to the outreach. I'm concerned about the November 15th deadline. Not knowing how long this takes a developer to prepare for application for an amendment. I'd like to know what the staff has done to inform the developer community about this November 15th deadline.

>> Joe Horwedel: Thank you, Councilmember Chu. As a part of the process to file an application for general plan amendment, it's one of our most simple processes. It is basically a letter or application that says I want to change from this color to another designation. Paying the requisite fees. It does have environmental review that goes along with it. They don't need to have architectural drawings, they don't need grading plans, those types of things. So it's something literally someone could decide that afternoon that they want to file a general plan amendment, and we can accommodate that. We have been working through our different developer forums to alert property owners, and the development community, the consultants that work with property owners about the proposed deadline. We started that about a month ago, to go through and say this is something we're going to be talking about today at council, it is something that we're asking the council to set a deadline a month from now, that would say bring in the general plan amendments by that date. It is something that back in the '80s, we used to have in the general plan, the deadline said that June 1st was the deadline for all general plan amendments, and if you didn't get in by 5:00 on June 1st, you waited until next June 1st. That's not unusual, to have a hard, fast deadline like that.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you. I just wanted to say thank you to Susan, Joe, Laurel and the whole team. I've read the general plan, it reads fantastically. The movie's going to be even better. I can say after 43 task force meetings and seven workshops, it feels like only 37 task force meetings and maybe five workshops. So it's moving right along.

>> Mayor Reed: I have a question on the pending general plan amendment applications which is in the staff memo at pages 2 and 3. We have seven pending general plan amendments that are consistent with 2040 general plan, we have five of the pending general plan amendments that are inconsistent with the current San José 2020 general plan and there are four that are expected to be considered by the council but doesn't say whether they're consistent, inconsistent with, either/or, or neither. And those four were the Mirasou winery, Brokaw Road, Monroe-Tish and Lester.

>> Laurel Prevetti: Right. We didn't want to get into the debate about the specific merits of these, since they are coming up so quickly. I can tell you Mirasou, Brokaw and Lester are considered consistent, so staff will have a favorable recommendation there coming to public hearing with our planning commission shortly and then to you December 7th. Monroe-Tish, we are still working with the applicant so they can demonstrate how they are meeting our employment land conversion framework. To date, we have not yet received that documentation. So we don't know if that one will are ready yet for December. If not it will be coming forward in June for your consideration.

>> Joe Horwedel: Mr. Mayor, on that one, we did meet with the applicant today with city staff and their full design team to work through the framework issues, and we have a meeting scheduled for Friday afternoon to see if they can pull it together by then. So that one we're still holding out on. And I did want to note there was a supplemental memo that staff put out on one of the amendments the Monterey road sun garden site that the applicant had asked that staff not include that into the general plan update itself but to keep it as a separate amendment. Staff is complying with that. We support the request. They want to have a little bit of certainty if for some reason the update was delayed past June, that they wanted to be able to still continue, because they are doing their own

EIR. And so there is a supplemental memo on that. And then lastly one of the other amendments that is listed that we said we would bring forward separately is the general plan amendment for the cemetery in South San José. Again we met with the applicant yesterday. To talk through the amendment. They raised some issues or provided some additional information for staff. So on that one I would ask the council to give me flexibility if for some reason we find that it's consistent with the genomes with the general plan which the applicant is asserting, that we would include it within the general plan. If there's still concern that we're not able to reach that conclusion, we'd let the applicant run that as a parallel amendment and it would be decided by itself. So --

>> Mayor Reed: All right, Councilmember Oliverio I think your motion was all of the recommendation of staff including the supplemental memos. Correct?

>> Councilmember Oliverio: That's right, it included the supplemental memos.

>> Mayor Reed: Any cards from the public to speak on this item? I have no requests from the council to speak. We have a motion to approve the staff recommendations. Any further discussion? All in favor? Opposed, none opposed, that's approved. One more milestone. How many miles are there on this journey? There's a lot of milestones. It's good to get past them though.

>>> Our next item would be item 6.1, an agreement with Ampco system parking for airport park facilities management. We have a motion to approve. All in favor? Opposed none opposed, that's approved. 7.1 is some actions related to fuel Cell system power production out at the water pollution control plant. I think there's going to be a staff presentation on that they may be making their way down watching it on television webcast. We'll give them a minute to get here. You ready to go staff or you need somebody tolls rally around?

>> I need the clicker. There it is.

>> Mayor Reed: Slide-changer.

>> Well, good afternoon, Mayor Reed and city council. My name is Dale Erke, I'm deputy director of environmental services and plant manager at the regional weighs water treatment plant. We don't have a full presentation on the fuel cell power purchase agreement but we have a few items that we need to highlight before council takes action on this item. Am I going the right way here? There we go. Went back. Okay. The first thing we want to bring to your attention is we are recommending a change in starting price from 11 cents per kilowatt-hour to 11.5 cents per kilowatt-hour, and we are recommending that the city keep the renewable energy certificates instead of selling them to UTS, for .5 cents per kilowatt-hour. So in our original, in our city council memo we had recommended a starting price of 11, we're now recommending a starting price of 11.5. We are doing this because recently the City of Santa Clara, who is the co-owner of the regional wastewater treatment plant, has expressed a strong interest in purchasing the renewable energy certificates, and so we are making this recommendation so that we can own them and then sell them to the City of Santa Clara. We do not have an agreement at this time with the City of Santa Clara, but they have a very strong interest, and so we will be working with them and come back at a future date with an agreement with the City of Santa Clara to purchase those. So this is basically a cost-neutral change. The worst case is, if we can't, just want to make you aware that if we can't get an agreement with the City of Santa Clara we will still own these Recs and they do have a monetary value on the renewable energy credit market of somewhere between .1 and 1 cent per kilowatt-hour. The other items that we wanted to highlight is we are still in -- have a couple of unresolved issues with UTS with regard to this power purchase agreement, one of which has recently come up in which UTS has asked that the city purchase property insurance for the fuel cell, and that they pay for the added premiums of that property insurance. And right now risk management is investigating the feasibility of doing that, and this may take us a couple of days to work out. The other item that is pending is that in this PPA the city has agreed to deliver biogas to UTS in a quality set forth in the PPA for carbon dioxide, methane, hydrogen sulfide, siloxanes and VOCs, and the City has agreed to pay UTS for extra gas-cleaning costs if we exceed those limits. And how those limits are determined for Siloxenes and VOCs is still in negotiation. Just to give you a reference, a 10% exceedence could cost the city an additional $40,000 per year, just to give you a rough order of magnitude, where the value of this PPA is about $2 million per year over the 20-year term of the PPA. Thank you. Last couple of items we want to bring to your attention is that UTS has a provision in this PPA that they can terminate the contract of even after the city signs and they sign, prior to the city building any pads or interconnections to this fuel cell. And so just want you to be aware that each

though we all have an agreement here they do have a right to terminate this contract after we sign if they find that they can't make the financials work for the proposed price that they've given us. And lastly we want to point out that this PPA is considered private activity and that will place limitations on future plant agreements if the city wants to issue tax exempt bonds. So because we have -- because we have a couple of pending items we are asking council to consider a revised represents to negotiate and execute instead of a straight execute, and the new recommendation reads, accept the report on the request for proposals for a power purchase and site lease agreement for fuel cell system power production and adopt a resolution authorizing the director of finance to negotiate and execute a power purchase agreement, site lease and other necessary documents with UTS, SJ-1 LLC to purchase fuel cell energy at the San José Santa Clara water pollution control plant for a 20-year term. With that that ends our comments and we'll be happy to answer any questions.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Dale, thanks. I'm trying digest some of the changes. Do we expect that Santa Clara will pay us a half a cent a kilowatt for the recs?

>> Yes, they had offered to pay the same price that UTS was going to buy the recs off us for, so that's why I say it is a cost neutral.

>> Councilmember Liccardo: Okay, that makes sense. Then the PG&E rebate, the SGIP, who gets that, UTS or the city?

>> UTS does.

>> Councilmember Liccardo: And then the replacement of the fuel stack, that has to be replaced every five years?

>> Every five years, yes.

>> Councilmember Liccardo: Do they pay for that?

>> Yes, they do. It's built into the purchase price.

>> Councilmember Liccardo: But they also get the rebate. Here's my concern. I'm fully supportive of us innovating and trying fuel cell technology. I have two concerns, whether or not this is the right company, and secondly, whether or not PPA is the right approach. And let me just explain my concerns in broad strokes, and then maybe you can respond. As I understand UTS gets the 30% investment tax credit from the feds, they get the PG&E rebate, they get the $1.5 million from the city's capital investment for the pad and some of the connections. They get a dedicated source of clean fuel, at a digester gas that the city provides and has to provide in a very clean state. And they get a fixed price on electricity at 11 and a half cents which I understand is pretty close to the market price with an escalator that seems to be relatively close to market if you assume 4.8% will be what the market moves at, then it will be even. But I know it's been higher in the past at times, it's also been lower. Looking at distance of this deal it makes me wonder what's the city really getting, from this deal, or from this company? And given the fact that 49 companies looked at this online, and many more, or a few, quite a few less expressed interest but only two submitted bids are we really getting the best deal we can? And particularly with everything we're giving up and everything UTS is getting.

>> That's a good question. We had attempted to do an RFP in January. At that time we only received 3 proposals. One from UTS, one from Chevron energy and one from another company. So even though we have a lot of people that are looking at this, the actual number of companies that are proposing, and this is a very unique one because unfortunately biogas isn't clean. It takes a lot of effort to clean the gas up because it will damage the fuel cell very quickly if they don't clean the gas. So we're giving them a dirty gas, they're spending a lot of money to clean that gas, and there aren't many systems -- there aren't many fuel cell systems out there that will guarantee that they will work with biogas. A lot of them will work with clean natural gas, but not biogas. So we think that's limited the market and how many people want to propose on this.

>> Councilmember Liccardo: Is that essentially what is pulling us in is we would find a hard time finding another company that would accept biogas? I mean because we could just be going out to PG&E and be paying you know and saving money, right?

>> Right. I think one thing that we tried to make clear, in the council memo, is that we need to do something. We can't just buy off the grid. We've got a wastewater treatment plant that has to run 24 hours a day and having backup power is essential. The power we have now is old engine generators. They are aging, they are failing. We need to replace onsite backup power, so we need to do something. Fuel cell is a new technology. We tried to highlight some of the benefits. Yes, it is going to cost more. And I think we were very clear that purchasing fuel cell energy, our estimate is going to run us somewhere around $390,000 a year per year for 20 years more than if we were to go get a new internal combustion engine or even a turbine.

>> Councilmember Liccardo: Right.

>> So it's going to cost us a little more money. But we tried to highlight the value of the fuel cell in the sense there's very little pollution, lower greenhouse gases, no noise, there's a lot of values that are difficult to monetize.

>> Councilmember Liccardo: And I'm not questioning that decision, to go to a fuel cell. I guess I'm questioning the price we're paying and everything we're giving up, is this the best deal we can get out there from a company in the industry?

>> That's a good question. We know a couple of other PPAs that have just occurred, and the price we are receiving is slightly lower than those PPAs. One of them which comes to mind is Inland Empire, and their PPA price is starting around 12.5 cents a kilowatt hour. Their escalator is a little bit different, but we did the calculation, and over a 20-year period we're paying slightly less than they are. So just looking at other PPAs for biogas, we feel like we're getting a reasonable price.

>> Councilmember Liccardo: Okay, that's helpful. Thank you, Dale.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. In looking at the advantages it's clear there are a lot of advantages in look at using our biofuel instead of biogas instead of sticking with internal combustion. Is it the length, I guess the length of the contract bothers me because maybe now there are only three companies that we're looking at, because as we have more players in it and more companies see opportunities, do you think that's going to change over the next few years and are we going to be locked into something that later on -- I mean is there any way to take advantage, of the changes that will happen or is that relevant?

>> I guess it's really hard to predict what's going to happen down the road. Fuel cell energy is our -- fuel cells themselves are highly subsidized as you can tell, the State has another 5.4 million in subsidies and there are another 30% investment tax credit. Those subsidies are reported to end in 2016 and fuel cells are supposed to be able to stand on their own at that time on market price. We really don't know what's going to happen. So I guess I really don't have a very good answer for your question. Or who's going to step into the market and take that risk. And the reason we went for a PPA was there is risk here. There is risk that the PPA provider is going to take on that the fuels cell will work, that the cleaning system will work in conjunction with it, and that if Fuel Cell Energy, who is the manufacturer of the fuel cell, goes out of business in ten years, they're the ones who've got the up-front money and the risk. We just pay for the power. So that was one of the reasons we went for a PPA as opposed to doing it ourselves.

>> Mayor Reed: I believe that treatment plant advisory committee recommended this.

>> That is correct.

>> Mayor Reed: I was there, so that's the way I remember it. Just verifying that I recommended it correctly.

>> It was unanimous, that's correct.

>> Mayor Reed: And that involves the technical people from the other tributaries as well as the other cities and our staff and then the electeds as well.

>> That's correct.

>> Mayor Reed: We have some support from the other folks on in. And I think the total rebates and incentives is $6.8 million.

>> That is correct.

>> Mayor Reed: This clearly wouldn't make any economic sense if it wasn't for the state and the federal support on these particular projects.

>> Right.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you mayor. Are you saying that the federal incentives ends in '16, did I hear that correctly, the federal incentive?

>> The federal incentive is about $1.4 million.

>> Councilmember Pyle: No, the ending date.

>> Oh, what we're hearing is that the state SGIP may end around 2016.

>> Councilmember Pyle: Okay, I did hear that.

>> The federal incentives are annual.

>> Councilmember Pyle: You're really up against, talk about the rock and the hard place, you've got it right here. Because of what you have left they're unreliable and could go dark at any time, would that be an accurate assessment?

>> I wouldn't say tomorrow. But they don't have a whole lot of life left.

>> Councilmember Pyle: And then the other thing is what you have now doesn't take care of digester gas. And this does.

>> What we have -- we do -- we do use all of the digester gas that we produce at the plant. And our current engine generators do run on digester gas, and we also have some engine blowers that run on digester gas. So yes, we do -- we don't flare anything, it's all being used for energy.

>> Councilmember Pyle: Okay, so as far as the initial price, that would be mitigated greatly with the incentive from the state and the feds?

>> The incentives significantly help out with the cost of this, yes.

>> Councilmember Pyle: So you're going to be completing this in about 2012?

>> Correct.

>> Councilmember Pyle: And in the meantime for backup, what -- what do you do?

>> Well, I mean we still have -- we still have six engine generators and blowers that still use digester gas. We don't think we're going to have a problem with using our digester gas. That won't be a problem.

>> Councilmember Pyle: Okay. Well, I think something that has served for 53 years, which is the case in some of them, that's a good long service. Time for retirement.

>> Mayor Reed: Vice Mayor Chirco.

>> Councilmember Chirco: Sounds like a significant portion of this is mitigated by the subsidies from the state and the federal. And it's unpredictable what's going to happen when the subsidies are terminated. What I'd like to do is move the staff's recommendation as revised in your presentation.

>> Mayor Reed: All right, we have a motion to approve the staff's recommendation. Further discussion, no cards from the public, all in favor, opposed, none opposed, that's approved. We'll now take up item 8.1, our independent police auditor year end report for 2009 followed by 8.2, San José police department internal affairs unit 2009 department initiated report, we'll hear them in sequence. I think what we will do is have the presentations from the IPA and then the presentation from the department in case there are any questions across presentations before the council votes on either one. We'll have all the information available to us so we're welcoming our IPA, and I'm not going to ask --

>> La Doris Cordell: Anything to get attention.

>> Mayor Reed: Okay. Judge Cordell.

>> Shivaun Nurre: Actually, I'm going to be moderating the presentation. Shivaun Nurre, currently the assistant auditor. With me today is Judge La Doris Cordell, the Independent Police Auditor, and Diane Dulan Diaz, community specialist and complaint analyst with our office. The San José municipal code mandates the IPA to report annually to the council. The report is to include information on complaints and to identify trends, and this

report reflects data from the calendar year 2009. And during that year I was the acting IPA. I think you missed one. Can you go to this slide? Oh, here we go, okay. So probably the most significant item in the report is the dramatic decrease in complaints. In 2009, we received a total of 365 matters. That includes 213 matters classified as external complaints, 103 matters identified as non-misconduct concerns, and 49 department-initiated investigations. That reflects a 54% drop in matters classified as external complaints. And we found this drop a bit surprising because during that year 2009 there was a lot of media coverage of the SJ PD and some of that coverage was not very positive. So we had anticipated that external complaints would at least remain the same as 2008 if not higher. So why the drop? We identified several potential explanations an page 27. And just briefly, I think we have to recognize that there could be positive change in the department, starting October 2008, the department started instituting a lot of changes in terms of training, supervisor signoff and those efforts continued throughout 2009. And it may have resulted in officer improvement and improvement in police community relations. Another possible factor is outreach in our office. Our office was working with a reduced staff in 2009. And we were able -- we weren't able to do the outreach that we did in the prior year. So that could have reflected in a decrease in people contacting our office or the IA regarding officer complaints. Terms of publicity, our office also received some share of negative publicity in 2009, focused in the effort in May to appoint an IPA that didn't go as planned and some ongoing discussion about whether the auditor model is a good model for San José. Also during the outreach in 2009 we heard more than in years past, people expressing concerns about lack of confidence in the process, and also retaliation claiming that they were worried if they filed a complaint that they would be retaliated against by the department. So again we're not sure which, or any one, or if all contributed to the decrease in the complaints received this 2009 calendar year. The next slide is complaints by council district. And district 3 which contains the downtown area continues to receive the highest number in percentage of complaints. This is not -- this is a trend but it's not surprising in termination of the police activity in that area. So the next slide shows allegations most frequently received in 2009. One thing that's unusual in this slide at least in terms of my memory is that courtesy is generally always been in the top 3 of allegations. And so one explanation is, in May, I'm sorry, in July 2008, the courtesy definition was changed. And in 2009, we asked that that courtesy definition be revisited. We felt it was a little bit too tight, too -- not comprehensive enough. And we asked that the definition be revised to include an affirmative duty to treat the public with respect and also a limitation on the allowable use of profanity. And that memo is in the report at appendix H. So happy to report that Lieutenant

Wager from internal affairs has informed me that the courtesy definition was changed last week, I think that has been distributed or will be distributed to you soon and it does contain what we thought is important in terms of an affirmative duty to treat the public to respect. So it will be interesting to see in the years following whether or not courtesy goes back up to the top three. Next slide is audit outcomes. Starting in 2009, IA staff and IPA staff engaged in a higher level of informal discussion about concerns over what we felt was perhaps missing from investigation. Can you see we have more cases closed after agreed action which I think is reflective of that dialogue. We also have a slight uptick in cases closed as just agreed. And it's not reflective at all in terms of the relationship between the IA staff and the IPA staff, which in 2009 was very positive and respectful of our varying roles in the process. The last slide shows a snapshot. When we were doing outreach in 2009 we had a number of issues and concerns where people I think were confused about what we do or what the IPA can do. So we provided some snapshots. This particular one has to do with our role in officer-involved shootings, trying to show the decision of what we can do in such incidents when a complaint is filed by a accident and in those matters in which a complaint is not filed. We have snapshots throughout the report. We have one on the IPA authority and the limitations on that authority set by charter. A snapshot of how state law limits access to information contained in peace officer complaint records and snapshots of what happens to complaints filed in San José, and some other snapshots. So those are the pretty much the highlights of the 2009 report. And I want to thank the IPA staff for their hard work in putting the report together. I want to thank IA staff, particularly lieutenant Esquivel was the IA commander during 2009. He's been promoted to captain, and the current IA commander, lieutenant Rick Wager. I want to thank you, the city council, for appointing judge Cordell the new IPA. Her appointment has revitalized community and officer interest in our office and revitalized our staff, and Judge Cordell would like to say just a few words and then will be available to answer questions after the SJPD presentation.

>> La Doris Cordell: Thank you, Shivaun. To the mayor and council, first I apologize for my casual Stanford attire. Actually I don't apologize for the Stanford part, but for the casual part. I had knee surgery six days ago, and this is the only kind of outfit that will accommodate that bandage until it gets removed later this week. I thank and I commend Shivaun for her leadership of our office during the almost two-year transition period. That she, in addition to everything else, was able to produce this outstanding annual report is amazing. I thank and commend my remarkable staff, Diane Dulan Diaz, Vivian Do, and Jessica Florez, who are the three hardest working and

dedicated people with whom I have ever worked. I come before you today with 91 days as the IPA and as excited and as enthusiastic as I was on day 1. And that is because of the changes that my wonderful staff and I have made and the changes that we have yet to make. With your permission, I'd just like to take very few moments to give you a brief recap of some of these changes over the past 91 days. Perhaps most importantly our office's relationship with the police department, the line officers, the leadership, the POA internal affairs continues to be respectful, civil and collaborative. There is an understanding among all of us that our offices -- our office exists in part to improve police practices and in part to ensure that the integrity of the police department is a top priority, and in part, to build trust between the community and the department. We have revised our 30 day letters to complainants which for the very first time now include information about the complainant's right to have support persons and interpreters when they are interviewed at internal affairs. We have revised our closing letters to complainants to include more information to them about their cases. We have made available to the public my calendar so that anyone can know my schedule as it unfolds. We have adopted a strict no-gift policy and a code of values, both of which are posted on our Website and displayed prominently in our lobby. We have initiated a 60-day contact system in which complainants are periodically called by Jessica, our office manager, and given an update on the status of their complaints. Heretofore complainants, once they filed their complaints, were not contacted by IPA staff until their cases were closed, which could be months or even years down the road. We immediately released to the public the independent investigative report into an allegation of a confidentiality breach in our office, an investigation that found no merit to the claim. The report was unredacted, unedited, and can be read online on our Website. We will shortly announce the hiring of a stellar person who will join our staff, which will mean that for the first time in a long while our office will be fully staffed. We have reached out to the Mexican consulate in response to concerns expressed by the consul general by offering to come the consulate once a week to provide information to Mexican nationals about the IPA's services. We have made recommendations to the San José police department for the improvement of police practices and policies, some of which have already been instituted. For example, we suggested that the SJ PD Website, its home page, include a link to internal affairs so that the public could know about the complaint process. As of today if you go to the department's home page the link is there along with the link to our office. Our outreach to communities throughout the city has been unprecedented. The IPA road show will, before the end of this year, travel to all ten of the City's districts. Since May 17th when I began my tenure here, we have made contact with over 5600

people. We have revised our brochures in three languages, and utilize our now and much sought after bracelets that contain our phone number, in order to get the word out about our office. We have reconstituted our advisory committee with 21 stellar members of our community who bring diversity with respect to ethnicity, age, gender, advocates, education and thinking. The first meeting of the IPAC is October 28th. We have initiated an audit of the 77 recommendations made by the IPA office since 1993 through 2008 that were adopted by the police department. That audit will be completed before the end of this year. We will perhaps as soon as this month begin a mediation program created in collaboration with the San José police department and the mayor's office. We have identified our first case. The officer and complainant are on board, and we have a volunteer retired judge. It is my belief that this is the only mediation program in the country that utilizes retired judges who volunteer their services. The mediations will focus exclusively on complaints of discourtesy and rude conduct and internal affairs will select the cases for the mediation. In 2011, our primary focus will be outreach to our City's young people. It is our plan to create the IPA youth advisory committee. Because after all, who better than young people to advise us best how to reach out to young people? And it is our plan to hire these young people to do outreach for us during the summer. All it will take is about $20,000 funding that I'm confident we'll be able to locate. So there is much that we have done, there is still much more to be done. This is an exciting time with the advent of a new police chief whom we trust will be as positive about our work as Chief Davis has been. With your continued support we will do our best to fulfill our mandates and, by doing so, work to build trust and a better relationship with the San José police department and the people San José. Thank you.

>> Mayor Reed: Thank you, good report. We'll take questions and discussion with the IPA before we hear the department's report. We'll just hold the vote until we've had the chance to talk about both. I had a couple of questions or comments. First, is on the drop in the number of complaints per 10,000 residents. Interesting discussion to that. And we shouldn't be surprised that we get fluctuations in these numbers that we don't really know how to explain. It happens when you're dealing with 400,000 calls for service, 25,000 arrests and only a few hundred complaints. They go up and down, and in ways, it's good to think about it, but we probably never can fully explain why they jump one year and go down the next year. But in that discussion one thing I think is worth pointing out that the 2009 community satisfaction survey conducted by the city reflected an increasing awareness

of and confidence in the IPA, the highest level of confidence reported since 2003. So I think that's worth noting, Shivaun. I'm sure it's even going to go up.

>> Shivaun Nurre: I think I slipped that in a footnote.

>> Mayor Reed: Good. Well, that's good. I think that's good to call that out, so I'm doing that. And the other one is on the officer-involved shootings. We don't have the history here but I remember the history well and I want to compliment the IPA and our department, our chief particular, for the changes we have collectively made around officer involved shootings because we have dramatically cut the numbers. And that's a good thing and sometimes we forget that it wasn't that long ago that we had ten in a year. And that's taken a lot of work. Good, thoughtful work, and having the IPA involved in that has been very important. Congratulations on that. Let's not forget the progress we've made. I think we had several, two or three years where we had zero. Which I don't think any big city in the country can probably match that. That's a good thing and the IPA has certainly played an important role in achieving that. Councilmember Nguyen.

>> Councilmember Nguyen: Thank you, mayor. Thank you very much, Shivaun, and Diane, and Judge Cordell, for the report. I couldn't be more happy and more satisfied in the result. I have a quick question, and then I would like to make some comments, too. But while we've seen a dramatic decline in complaints, an area that still concerns me is on page 31 where you talked about the percentage of allegations closed with unfounded findings have increased over the past four years from 6% in 2006 to 13% in 2009. This is alarming because obviously, most of the allegations that surface around the bias-based policing and the use of force has been something that has been raised constantly by members of the community. So moving forward, I was just wondering. Are there some concrete steps that can be done to address this issue? Obviously, you know, it's -- I acknowledge that it's very difficult to prove these allegation and it's often motivated by the officers sort of subjective attitude. So it's kind of difficult to prove it. But I think that, you know, given what we have done so far, I think that there are ways that we can actually try to find some resolutions to some of these concerns.

>> Shivaun Nurre: During the discussions that we had with the City Manager's office about the revisions to the complaint process that were implemented in July 2008, we did have a discussion about whether or not we -- a finding of unfounded would be appropriate for an allegation of bias based policing. Because unfounded implies a certain standard, conclusively proved and if you're then coupling that with the officer's subjective intentions, you've got a problem where you're never going to get a sustained or even close to sustained allegation. So we've had some discussions with the City Manager's office on whether or not we should have another finding or have an amended finding to reflect that. Last time we had a discussion an that was some months ago and we hope to get back on board on that because it's a really problematic issue we're dealing with this happen I know Los Angeles city had a big discussion last year because they had 320 allegations of bias based policing that were deemed unfounded and so they revamped their system. I had acquired their documents and have discussed a little bit with Commander Webb from L.A. but we haven't joined back up again with City Manager. So hopefully, with the judge on board, we will be doing that in the near future.

>> Councilmember Nguyen: Oh that's good to hear. That was going to be my follow-up question, that I understand that that's a problem that L.A. was dealing with at the time, and if they had found some methodologies to address this issue, that we can probably try to learn from that and use it here in our city, as well. Shivaun, you talked about some of the factors on page 27 that contributed to the dramatic decline in the complaints. I also wanted just to point out some of the things that this administration as well as the police department has done in the last year that I thought you know was really important in terms of contributing to the dramatic decline, and that has a lot to do with the fact that back in early 2009, or late 2008, with the public outcry in terms of the public wants to hold public officials and the police department accountable for the uses force for arresting a disproportionate arrest among Latinos, the City Manager quickly convened a task force that is comprised of mostly members from the community. We did that and I believe we did that successfully, the work of CPLE, the work that is done now, they're doing a tremendous job just looking at documents going back ten years from today, presented to the Public Safety committee on a quarterly basis, I also think that the police department has actually taken a really crucial step in the decrease of the department initiating investigations, I think that's very helpful in terms of holding the men and women more accountable for their bear and also the public safety committee also had two special meetings where we had over 100 members of the public who actually attended and talked about their concerns in

regards to the conduct and activities from the police department. So these are things that we have done over the last 18 months and I think that it's really critical to recount them and point them out in terms of what we're trying to do to address some of the issues that have been brought forward in the last year. So I just wanted to share that with my colleagues. I wanted to thank obviously members of the Public Safety committee for further engagement and also really contributing to this issue and we're really looking forward -- I mean work really hard in terms of addressing some of these issues. And then I'll stop for now and then I have some comments for the chief later after his presentation. Thank you.

>> Shivaun Nurre: Councilmember Nguyen, I want to point out that there were so many efforts under way that we didn't list them all, and we tried to put them all in the footnotes on page 27. There were a tremendous amount of efforts, and those efforts that were made public reflect even more hours spent in terms of trying to discuss solutions and trends, and I know that a tremendous amount of work went into every single improvement and change that was made in 2008, 2009. Didn't mean to gloss over that, but there were actually so many it would make my report very long.

>> Councilmember Chirco: Councilmember Kalra.

>> Councilmember Kalra: Thank you. Shivaun, I thank you for a very challenging time that you had to be the interim IPA. I think both in terms of the fiscal situation, and then the support you're able to get due to that as well as what was happening outside the IPA office. And I think that you just did a tremendous job in really keeping the ship afloat and I think this report reflects that, I think it's a quality report and I know that you and Diane and others in your staff have really worked hard to continue outreach efforts with limited resources and I see Diane all over the place in the community. And I just want to commend you for that. On the -- in terms of the report, I think that, you know, the drop in complaints -- I think the mayor is right, we may never know exactly why, but I certainly think that part of that is the flux the office is going through in terms of being able to do outreach, and I do think part of it was also response from the police department in terms of trying to respond to some of the more common complaints and issues they're receiving and upping their training and what have you. But at this point really I think that now that there's greater stability with the IPA, I think now let's just move forward and see what we can do

going forward, and I think the numbers will be a little bit more reliable, now that especially with additional staffing there will be an ability from the IPA to be -- to be a consistent -- a consistent agency in working with the police department with the community. A couple of numbers just to point out which seem consistent year in, year out, which is not necessarily unusual to San José or specific to San José, but certainly is something that I think at least catches the attention, is when you look at the force, cases by ethnicity, even thought the sheer numbers are rather low, again you see a much higher percentage of African Americans. And particularly with use of force complaints, a much higher with Hispanics and Latinos. There could be any number of reasons for that, but that is always something that catches my attention and certainly has caught the attention of the community in the past. And so I'm hoping that with the IPA's work on that, and working with the police department, that we can identify some of those factors, and it very well -- you know, there could be a number of reasons, but I think by working together we could hopefully try to narrow down some of those issues and work on those together. Additionally, one of the figures on 51-5 (c), talks about the years of experience of the officer. I think we all -- anyone who has worked in criminal justice knows that the more experienced officers are much better at conflict resolution, and whatever opportunity we have to use those more experienced officers -- and I don't know if IPA came out with a suggestion on that, but I believe the police department already does that, and any other work they can do in that regard based on these numbers I think would be helpful. Because clearly, the more experienced officers tend to be the subject of these complaints rather than the newer officers. And I think that is also a common trend, but certainly something that I wanted to point out. And then finally, I just wanted to thank Judge Cordell. I think you've been more than promised in terms of in such a short period, the outreach you've done, you've listened, as you said you would. Some of the projects you're going forward with, and some of the very proactively implemented programs you have and gift policies and what have you, I mean, I think it's tremendous how quickly you really started to change the atmosphere in the IPA. I'm not surprised by it but I'm very pleased to see it. I'm very happy to hear about the mediation. I think that's something the police officers are going to appreciate, and I think that it's really going to really help them in their relationship with the community. It's going to make our residents, those that for whatever reason, whether it because they felt that the officer was rude, or what have you, I think that it's really going to build a stronger relationship with the community. The officer won't have to have something on their record that's a blemish, but rather -- which is good, but I think the end result and the most positive result is just going to be a better community, a stronger relationship with the residents and the

police officers. And I'd really like a 60-day update. I think that even though it seems like something minor on the surface, when these complaints go on for months and months and months, and the complainants have not heard a thing, I think that really undermines, but their sentiment is going to be with the end result. The end result can be the exact same. The fact that you're following up on a regular basis I think gives them more confidence in the end result, knowing that they haven't been ignored. Even if they weren't ignored, they don't have the feeling that they were ignored. And I think that such a simple thing like that, although it definitely adds to the workload of your staff, I think is going to prove to be a very valuable -- one of many very valuable changes. And so I just wanted to thank you, Judge Cordell, and the entire staff for the work that you've done. I look forward going -- I look forward to seeing what you can do in terms of offering more recommendation to the police department and having that working relationship so we can have some policy -- continue to put policies in place that improve relationships between our police department and the community. Thank you.

>> Councilmember Chirco: Councilmember Pyle.

>> Councilmember Pyle: Thank you. All I can say is wow, you have done so much. I started jotting down notes here. I mean, 5600 people contacted, and you have a good relationship with SJ PD, audit of all cases, you're volunteering retired judges, I love that. But probably the thing that warms my heart more than anything else is the outreach to youth. After being in education for 30 years, I just have to applaud that, big big big time. That will make a huge difference in the future of this city. Emphasis on facts. I really like, your community advisory group. I know every single one of them. They're quality people. And I'm delighted to see that the taser use is down and the monitoring of the cases is invaluable. So thank you for that, and many other things. Six days? I thought it was more like six weeks before you should be -- hmm. Hope you're okay.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you. And first of all, Shivaun, thank you for this report. It's very informative. And it looks like the department, even though we were going through some challenging times did what they needed to do. They stayed focused and you continued to offer the best quality of service that you could

to the constituents that we represent. And judge Cordell, I'm probably going to piggyback off Councilmember Pyle. I'm excited about the youth advisory. I think that that is going to be a great edition to your panel of community people. And one thing I wanted to ask you around -- in that particular area, as we look at our youth across the City of San José, I know that sometimes it's challenging to get youth to say, I'm going to be committed to a particular cause. And we may have particular youth within particular segments of the community that may be more engaged than others. And I would hope that as you go out and create this panel, that we would encourage or put efforts, if there are certain segments of our community that may not be willing to step forwards, and create safe places so that we can hear those voices.

>> Judge Cordell: If I can make just a quick response to that. I envision -- and Diane is going to work with me very closely on this project -- I envision on this committee that what we will not have are the student council presidents and the class presidents. I want to go to the next tier. I want to get to those students who have potential, whose potential has not yet either been recognized, or been tapped. And the way we finds these young people is through you all, and through schools, counselors and teachers. And we're going to reach out throughout the city and figure out how it is we can work so that they are consistently meeting regularly, we can develop leadership skills and give them a sense that they're a vital part of city government. So our heads are in the same place on this.

>> Councilmember Campos: I'm excited. I think when we heard earlier today the invocation by FLY, that was pretty impressive. These young people were able to find something that helped them continue to improve their leadership skills in a positive way. So I'm real exited. I'm looking forward to being able to follow the progress of some of the things that you shared with us, which is very, very encouraging. And I am excited about you and your new team.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. I echo all the praise, and I can't add any more to it. Because it's been so effusive already but I really appreciate all the work that's been done, particularly on the follow up that's

been done and the mediation, although I think judge Cordell, we're going to get you a set of San José sweats now you're in San José. I just wanted to pose a couple of questions, and not to take the look at the cloud rather than the lining. Obviously it's a great thing that we have a reduced number of complaints and I think we all agree to that. And I invite the chief when he comes to make his presentation as well to offer his own view. I wonder if other explanations might also include in the constellation of potential factors here, the fact that we do have a smaller police department now that's going to have because we've now had what, 100 retirements in the last year that we don't have money to -- we don't have money to be able to replace those officers. And so we have, I would imagine, fewer interactions and I hope, you know, that's nowhere near, that drop is nowhere near as steep as the drop in the complaints, of course, the number of interactions or arrests or whatever. But would I imagine that maybe happening. I just throw that out as one idea. The other concern I have is with the extent of negative media, I am concerned, because I hear this occasional, just anecdotally, that officers may feel as though they are less willing to take risks that we may want them to take. Certainly, there's a positive and negative way of viewing taking risks. But you know it's well-known in baseball that if you don't touch the ball, you can't be accused of the error. I don't accuse any officers of laying down on the job but is the environment in any way inhibiting risk that we want the officers to take and is that a factor? I don't doubt that there may be many factors but I leave it open to anyone to respond if they have any views.

>> Shivaun Nurre: Well, I have two comments on that, Councilmember Liccardo. Number one, in terms of is the reduction of complaints tied to a reduction in the number of officers on the street. There is correlation, of course, but I anticipate that we might say in the coming years, with further reductions in officers we will see more complaints along the lines of neglect of duty or failure to take action. So I do anticipate that may rise. To your second point in terms of officers not stepping up to take enforcement action, that is a trend that -- a possible trend that has been identified in other law enforcements. There was a big study done in Denver recently, looking at officers not taking action number one because they felt that you know, with reduced staffing they didn't want to put themselves on the line. And number 2, if they put themselves on the line they open themselves up for discipline. That report has created a lot of controversy but it is something we should acknowledge and be open to look at. It's something that I would presume the SJPD would do, though.

>> Councilmember Liccardo: Thank you, Shivaun, for handling the ship, in the absence of an appointed IPA. We are grateful to your leadership.

>> Mayor Reed: I think that's it from the council on this topic. We will move to the next item before we vote on this one. We'll have the chief come down and present item 8.2 which is San José police department internal affairs unit department initiated investigations report.

>> Rob Davis: Good afternoon, council, Rob Davis, Chief of Police. The way that we will do our presentation is, I will ask Lieutenant Wager of the internal affairs unit to give a brief presentation on our departmental initiated investigations. Remember, there's a difference in what the IPA initiates and what we initiate. The IPA's office would be receiving complaints from the community. However, when there are internal complaints made, an officer can come forward complaining about something else that he or she has seen or what an officer is doing. Those are investigated internally. So that's why the distinction between what's in the IPA's report and what's in our report in explaining what we've done internally within the department. So at this point we are also joined by Lieutenant Sims from the research and development unit, but I will ask Lieutenant Wager of IA to give this brief presentation. And then I will follow up with some other comments.

>> Thank you. If I could get my slides. I'm Rick Wager. I'm the lieutenant in charge of Internal Affairs. I've been there three months, so Judge Cordell beat me by about two month to her job. I want to first start out by saying that I think it's been a very smooth transition, and we have a very positive working relationship with the independent police auditor and her staff. My goals are similar to hers. I want the investigations to be fair, thorough, objective and complete. And when we do have disagreements which we will I hope to be able to work those out at our level so the chiefs and the City Manager are not -- don't have to be concerned with those. There's the slide. As you'll see from the slide, in 2009, we had over 406,000 formal calls for service at the police department. Those formal calls do not include the numerous informal contacts that our officers have with residents every day. On average, and again I'm just speaking of department-initiated investigations there were 54.4 per year, over the five years that we're looking at. The high was in 2009, with 63. And the low of 43 in 2006. The two most frequent department initiated investigations, the allegations are procedural violation. And if I can draw your attention to page 3 of the

report, as procedural and conduct unbecoming. And they are defined there on page 3. Conduct unbecoming is a very broad allegation. And it's an allegation that a member's conduct either on or off duty can adversely reflect upon the department. Procedural, also very broad definition is an allegation that an action taken by a department member did not follow appropriate department or city policies, procedures, or guidelines. Thank you.

>> Rob Davis: I'd like to point out, that was one slide. I'd like to begin some comments also, because this is an opportunity for us to explain what the state of the department is in terms of complaints, both internally and what you have heard from the IPA. And I think it's very important to begin the comments section by expressing thanks to both Shivaun and our new IPA, La Doris Cordell, in terms of what they have been able to accomplish. There is unanimous consensus amongst the department that it has been a breath of fresh air lately in terms of the relationship between the IPA's office and the SJPD. For 12 years, starting back in 1993, we had a great relationship with the IPA, and we did a lot of things together. And what we have seen over the last few months is the fact that the system that was created back in 1993 works well. It's not perfect. It's a bureaucratic system. But the system works. And we have seen it reinvigorated, and we have been very appreciative of the professional collaboration that has come out of our new IPA as well as Shivaun. I'd like to offer my personal public thanks for what we have observed as both of them have gone forward with their assignments. I'm very grateful. I'm also a Stanford swimming and football fan, and so it didn't bother me a bit when you showed up in your outfit. A couple of quick things in terms of why we think also some of the other statistics are showing what they're showing in terms of a decrease in crime. Very briefly, to what Councilmember Liccardo brought up, we don't know what level the staffing is playing on these statistics. Because what you're seeing in these reports are 2009 statistics. You know, we've lost most of these people, these positions in 2010. So we will see in the next report how that may have impacted some things, but that's still a question in our minds. We do know that there's been a lot of effort and outreach both at the PD as well as at the IPA's office to try and explain what the process is and what complaints actually are. And we think there's been some advantages to the education that has taken place within the community for people to understand what really constitutes a legitimate complaint. We think in the past people are bringing forward complaints that weren't necessarily legitimate and we still explained that, but we received it as a complaint. To the extent that we continue education, we're able to resolve these things a lot quicker. And to that point also there has been a huge amount of outreach over the last 18 months at the PD to try and help our

officers understand through training that one of the single most important things they can be doing to drive down complaints is simply to explain to the people why they are taking the actions they are taking. Now, that's not always easy to do. When you are in the midst of trying to do an enforcement action, it is very difficult to have to stop and try and explain to somebody why you're doing what you're doing. But to the extent that they can explain those things afterwards, we find that that drives down the number of complaints, because people all of a sudden feel a human connection and an understanding for what the officers did, and we think that we're beginning to see some of the results of this training that is really honing in on that one specific thing. Also, much was made in the IPA's report about the fact that there had been some negative press over the last 18 months or so for both of our offices, and indeed, I want to be very clear about the fact that it is the responsibility of any professional police department to be open-minded and to receive these complaints and take them for what they're worth. You can't disregard these feelings, these sentiments, these -- whatever it is that somebody wants to bring and share with you in terms of their concerns, you have to be open minded to it. But it is also extremely important to put these things in context. I cannot, you cannot, none of us can control the quality of reporting and information that gets out there in the press. But a lot of times I continue to hear this fact or this statement that San José PD needs rebuild trust. We have trust of the community. We see it in everything we do. That does not mean that there aren't certain sectors of the city that need us to reach out there and to rebuild some confidence within those sectors. But I would remind you of the report that you received just about this time last year in which you received the city's annual or biannual survey in which it indicated that that scientific survey that was conducted by an outside, independent group with a plus or minus average of 2 -- I believe it was 2 point or 3.5% margin of error, in which there were 909 San José residents interviewed about what problems existed within our city. And the police department, out of those 909 people, there were only 8 people out of 909 who identified the San José police department as a problem. We're concerned about those concerns of those 8, but it is very clear that the confidence and the trust level of our community exists. And we need to be firm and clear about that, because our officers deserve to hear that. We need to be paying attention to the complaints and the concerns that I've stated, but also, you need to be aware that the biggest complaint that I've received over the last six months from our community, as I've gone out and engaged the community, the biggest complaint that I get is that the officers aren't staying for longer in their districts. We've been working long and hard to try and change our shift change from a six-month shift change to at least a 12-month shift change. If there's not trust and confidence of our police

officers, why would these people want our officers to remain in their neighborhoods? They love our officers, and they want them to stay. So it is absolutely incumbent upon us to pay attention to those 8, the percent, whatever the percentage may be, 1%, 2%, 3%, whatever the complaint section of our community may be. We are dedicated to going forward and addressing that. But we need to be very clear about the fact that we do have the trust of our community or we would not be producing the results that we're producing. Last but not least, I would like to compliment our internal affairs commander, Lieutenant Wager, who has stepped in also into the breach, if you will, and has done an absolutely superb job. We're continuing to move forward with our early intervention systems. We're continuing to look towards where we can use our automated systems to try and be able to track more effectively what it is we're doing. There are a lot of things we still have in front of us, but make no mistake about it. You've got a department that is committed to engaging the community. It's proven that, it continues to do that, and we're dedicated to that. We won't be changing that attitude as we go along. So in general, those are some documents that we have, and at this time we'll open it up to any questions that you might have.

>> Mayor Reed: Thank you, chief. I had a question about how we can better communicate the discipline information. Because I have heard people say, erroneously, that this department doesn't discipline officers. Well, we know from looking at the IPA's report that discipline is handed out. In fact, there were 218 sworn officers disciplined from 2005 through 2009. And so I don't want this misinformation to get out in the community and not be rebutted. And I don't know how best to communicate that. But there is an area where I think we could improve the communication and that is, the disciplines of classified employees report, that I think office of employee relations puts out. And one of the issues I have with that report is that for actions involving police officers usually the conduct is not disclosed. And this is a quarterly report, so while action may be underway, investigations might be underway, discipline might have been recommended, it's not done yet. And under -- as I understand it, under POBOR, Peace Officers Bill of Rights, we can't say what the nature of the conduct was until the discipline is final. So now that I've got the IPA and the City Attorney and the chief here all at one time, I'd like to get a solution to that. And I don't know if it is changing this report, dragging these numbers forward until we get the conduct, so that we can put it in the report and people see it. But as I understand it, once the discipline is final and the appeals are done, the arbitration is over with, we can disclose, not the name, but the nature of the conduct. I think that would be helpful, because where people say, well, we don't discipline officers for use of force, I know that's

incorrect, because I've heard reports from you in the past about use of force discipline. So I throw that open. Question for the chief and the City Attorney to work this out right here, if there is a solution.

>> Rob Davis: Well, we certainly are more than willing to try and take a look, if there is anything that we can be doing in addition to what is currently allowed to that. I do know that there are some other agencies that have found ways internally to express conduct. I know that for instance, you could go to another agency, I won't name them, but you'd go to another agency, and a certain -- every quarter have put out a report that talks about how there is this type of conduct, here is what the type of conduct was, and there was discipline meted out. You can't necessarily disclose what the discipline was, nor can you disclose the names. But I know that that's been done internally. I don't know to the extent that it's being done externally. So I'll obviously sit down with the --

>> City Attorney Doyle: I think -- I see Alex walked in the room just as we started to talk. And I know my staff has been in contact with his staff to talk about this. This is a report that's generated, and I think, mayor, your point about carrying forward and trying to update on a quarterly basis is the way to go. Under POBOR, the concern is always not identifying the officer. I think we can deal with the issue when cases finally are brought to conclusion. But again, I think it's a police department, City Attorney, OER, and we will definitely include the IPA, at least as a courtesy, to make sure that they're in the loop as well. This is really internal discipline issues, though.

>> Mayor Reed: I know we do a lot more discipline in this department than some other big-city departments who have different systems but are sometimes held up as models for us to look at. And I don't necessarily want to copy people who don't do it as well as we do. But it's important for us to be able to demonstrate that.

>> Rob Davis: Mayor, you're absolutely correct, it is important for our community to know that. We know we have solved one half of the equation. The people inside the department know that they're held accountable.

>> Mayor Reed: That's important.

>> Rob Davis: We'll work on the other half.

>> Mayor Reed: Thank you. Councilmember Nguyen.

>> Councilmember Nguyen: Thank you, mayor. You actually asked the question that I wanted to ask. I'm looking forward to different departments working together to address this issue. I just wanted to take a moment to really commend Chief Rob Davis for your steadfast leadership and your willingness to really do all you can to make things work and make as many people as happy and satisfied as possible. It hasn't been easy, and I think that the last 18 months or so has been really difficult for everyone, especially for you, just being the leader and the big boss of your department. And you know on one hand, trying to be a leader to your workforce, at the same time, being the spokesperson for the department in the community. So I really wanted to commend you for all your efforts.

>> Rob Davis: Thank you.

>> Councilmember Nguyen: At the same time, I really wanted to thank you for your years of dedicated service to the City of San José. I was on the community panel that interview and agreed to hire you and I had confidence in you then I still have confidence in you now.

>> Rob Davis: Thank you.

>> Councilmember Nguyen: And as you're ready for your retirement I just want you to know that you're really leaving this department in a greater shape. I know that we have a lot of critics out there and we will always have critics in regard to the police department but I think that you've gone above and beyond your duty as a police chief, as well as really conveying that message to your workforce. So I wish you all the luck in the world and happy retirement.

>> Rob Davis: Thank you very much. Appreciate it.

>> Mayor Reed: Vice Mayor Chirco.

>> Councilmember Chirco: Well said, Councilmember Nguyen. I had a question. My office, when we were going over this material, pulled out last year's report from the police department. And there's two categories that are in the last year's report that are not included in this year's report, and that is, the ethnicity of involved officers and non-sworn. And the other is the gender of the involved officers and non-sworn. Why were those categories not included in this year's report?

>> Rob Davis: What my staff is telling me is that initially it was in there but after the review by the city attorney's office it was taken out.

>> City Attorney Doyle: We've had concerns about identifying race, gender those issues in a public report. And so my staff working with the chief's department had asked that that -- that information not be included. Breaking down by ethnicity is an issue. Gender as well.

>> Councilmember Chirco: Well, and then to go back to the IPA, in going through this, I thought I had seen some of that, breakdown by ethnicity, so is that something they should also know to do?

>> City Attorney Doyle: I don't know. I'd have to check with both. This is a coordination issue in my office, who works with the police department who works with the IPA. But, you know, I don't have a quick answer on that one.

>> Councilmember Chirco, if I could address it. The DI&I report, as you saw, it's a very small number of complaints each year, where the independent police auditor is dealing with a larger number. So I think it was a different concern. When you're dealing with so few complaints, the odds of identifying an individual officer by either their gender or their race is more problematic when you're dealing with a larger number of complaints so that's the reason I was given.

>> Councilmember Chirco: I'll have to take your word for it. It does not look that inconsequential to me. But I think if we're looking at trends and trainings, what works and what's not working, I think, are critical.

>> City Attorney Doyle: Vice Mayor, let me get a more formal response back to you and the council.

>> Councilmember Chirco: I'd appreciate it, thank you.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you. Chief, thank you for reminding us when this first came to the council 16 years ago I was at that council meeting and you said that the system works. It's not perfect but it works. And I remember how well it worked, at the beginning of the process, and for many years, we had some challenges there for a few years. But you're seeing that the process is working with the new leadership, and the independent police auditor's office. And I think it's good for us to remind people that the process does what it says it's going to do through the independent police auditor's department, is it's an oversight committee. Representing the community. And I think that that's important to remind people why this was established and why the council back then felt that creating an independent police auditor department was the best choice for the residents of the City of San José. So I thank you for reminding us. And then the last thing I want to say is I want to thank you for your services. It has been an honor working with you. For many years, as a staff person and a councilmember. And I think the one thing that you did mention, is that the communities and the residents of the City of San José respect their officers. And they trust them. I have to say that I represent a community that sometimes has certain pockets that are poor in resources. And last week I was out walking the neighborhood, and your new captain out there, Captain Escarel, was out there. And I'll tell you that that made a huge difference to the community to know that they had their captain walking side by side with their councilmember, going through the neighborhood and listening to their concerns. And I said to him, I'm glad you're here, because a lot of the questions that they're going to ask me are going to be police related and I will not be able to answer them. So we really appreciate the fact that you remind us how involved our officers are, at a community level in engaging. And then the last thing, this goes to the independent police auditor's office, I think that the one thing that the police department does very well

with your office is, engaging the community and continuing to be out there providing and giving them information and educating them on their rights and what they can do if the process is not working for them or they're not happy with it. So I think that's one thing that both departments have in common so thank you, and thank you for your service.

>> Mayor Reed: I think that concludes our discussion on this item as well. We need a motion on both the IPA report and the chief's --

>> Councilmember Campos: So moved.

>> Councilmember Chirco: Second.

>> Mayor Reed: We have a motion to approve both reports. Further discussion? All in favor? Opposed? None opposed, both approved. Thank you very much. Takes us to open forum, before we start the RDA. Redevelopment Agency portion of the agenda. Roland LeBrun. We'll just switch staffs. The RDA staff in place for a minute. And then we'll --

>> Mayor Reed, members of the council, I have to go to London next week and may not be able to participate in the HSR discussions on November 4th and 16th. I appreciate the opportunity to share a couple of thoughts on the alignment through downtown. Diridon station and how we're going to sell this to taxpayers. First, the alignment. Much has been said about the impacts of the overhead alignment. But we need to refocus on our primary objective. And that's high speed. The only way to achieve high speed is on a straight line. It is purely a question of physics and money. The only variable is elevation. And when it is not possible to go in a straight line at or above ground, an underground alignment is no longer an option. It becomes a requirement. Airliners do not have to slow down as they approach San José, and neither should trains. The only acceptable design for San José requires the ability for high speed freight trains to drive through downtown in the middle of the night without them being seen or heard. The best way to achieve this objective is through a deep tunnel. And this provides us with additional opportunities. Because it gives us a blank canvas, upon which to design an iconic station without

having to worry about platform length or orientation. And here is what I mean. Here is the tunnel, the platforms have to be there. And Diridon is up here. You can rotate it, you can put it on its side, you get the general idea. And finally, we need to sell high speed rail to Californians for it to succeed. And the best way to do this is to open up the 85 corridor. Because once Californians experience speed in excess of 300 miles an hour, they will join the Europeans in demanding access to high speed rail in urban areas, as long as the impacts are properly mitigated.

>> Mayor Reed: Sorry your time is up sir.

>> Thank you, and may God bless if City of San José.

>> Mayor Reed: Thank you, that concludes the open forum. We will now start the Redevelopment Agency agenda with orders of the day. We need to drop item 2.4, that was approval of executive director's travel to Seattle. Any other changes?

>> Move approval.

>> Mayor Reed: Motion to approve the orders of the day with the change. All in favor, opposed, none opposed, that's approved. Closed session report, nothing in addition to what we've already reported. Consent calendar, anything from the consent calendar that council wants to pull for discussion. Motion to approve the consent calendar, all in favor, opposed, none opposed, that's approved. 3.1, presentation of the quarterly project status report that we almost got to a meeting or two ago but we didn't quite get there.

>> Bill Ekern: Mr. Mayor, members of the board, thank you. Bill Ekern. I will try very hard to respect your time but it is also important I think that we get a chance in the middle of our budget session to at least keep you apprised of the work we are doing and have planned moving forward. The Redevelopment Agency staff continues to work as you know not only in the downtown, in the historic areas that we've been working but also in the neighborhood and the industrial areas. A lot of the first series of slides that I have are things that you all participated in over the

course of this quarter. It's an exciting series of openings of businesses and industry in San José. I talked about some of these in the budget study session. This is a project in the Monterey corridor that takes advantage of the enterprise zone opportunities in the city and I think this is a good opportunity to talk about this and show within the redevelopment areas manufacturing still exists, an important element in the San José economy. Turning on the power for a solar array, in South San José was a pretty incredible project. This is over an acre of absolutely cells. 3.6 million dollar investment by power integrations, a great opportunity to showcase San José and the opportunity for solar development in the community. Boxano, a power company in North San José. I really do apologize, but I've been looking at these slides for almost a month now, and every time I see the mayor pondering the skeleton, I think he's looking at our budget. And I don't have another way to describe that, and I apologize for that thought. BCA architects, this is an example of businesses moving into the downtown. 36 professionals in the downtown. South of first street area, again contributing to that creative environment in the sofa district. Brocade, we have spoken of this countless times, a tremendous investment triggered and assisted in no small measure by the Redevelopment Agency's commitment of $4 million to equipment for this company in North San José and spurred a larger development up in the northern part of Rincon. Community centers reaching out to the neighborhoods, very important, this project opened in September. Redevelopment Agency in this project were also rewarded with recognition through the business journal for community impact, as a major project in the Bay Area. Again, in South first Street the agency's commitment to the facade program, especially beneficial in the sofa district and throughout the downtown to help small businesses and small property owners be prepared for economy by restoring this building and rehabilitating this space, the property owner is prepared to have a cafe open down in this area in the first quarter of 2011. Ongoing projects within the city, we've shown this for a while now that this is an important part of bringing housing into the downtown and that's the restoration of the First Church of Christ Science, this project is underway. Would liked to have been able to have this slide on the board last time we met, when there was discussion of work on San Pedro square, to give you a sense there are bodies out there quite a lot of work going on and this project is moving at speed. Project you'll touch on an opportunity to look at also today but in the North San Pedro housing area, this is a very important project. We have 26 million -- 24 million in state grant that will come in and provide the infrastructure to insist in the development of affordable housing and housing in the vital part of the downtown. Housing seems to be coming back as part of a theme. This is North San José and Irvine project, clearing of an existing building, Sony, removing of a Sony building and

creating the first phase of an Irvine housing project up on Zanker road. Civic auditorium, we are proceeding we're on schedule now to complete the work that's integral between the civic auditorium and the Montgomery theater so that by the first part of November, the children's music theater and other performances can begin to take place. In the Montgomery Theater, the elevator I'm told is whisper-silent. Work continues within the civic auditorium. We're working our way with some issues of building out the concession areas and we hope to be back to the council and the board sometime in the future for solutions and recommendations for how to proceed with that. Our budget and much of the work that we do has come to me over this last week I was meeting with a couple of groups from China and one of the things that they're most interested in is how -- and what's the benefit of the Redevelopment Agency and one of the things that you find yourself telling them is that the Redevelopment Agency is able to buy and sell property. It's a tremendously powerful incentive for bringing businesses and bringing development into the city. This is an example of some projects and properties in Downtown San José that we've used that ability over this last year and this last quarter. Ongoing work in the downtown and throughout the city for outreach for recruitment and retention. Again, Redevelopment Agency's investment in the downtown association, contributes to bringing 125,000 people to the downtown San José during this summer. We've spoken about the retail openings in the downtown. Again it begins to feel like the economy is coming back when you look at these businesses. And the neighborhoods I continue to be especially impressed that we've moved away from restaurants and moved into services and other things that really provide the elements of ingredients for the people that actually live there in the area, different things, apparel and glass and things that you need beyond just food and drink. Then downtown the next quarter we'll begin to see these projects coming online. This is an example of some of the projects that you'll see, restaurants and bars opening up. Important on the club sport again is that's a space that the City of San José operates and so it's a great revenue source for the city and a project that the Redevelopment Agency has sifted, and the neighborhoods again, retail continues to move forward. These are projects again we expect to see in the next quarter. Finally, this project -- program caught me really by surprise. And this is an effort in North San José that the Redevelopment Agency staff facilitates where the police department goes out and meets with the property owners in the businesses in that area to talk about things of interest to them. A lot of the discussion is developed around crimes, trends they are seeing, what sorts of break ins are happening, what's going on in the areas that they need to pay attention to and how can they help each other. This program is successful enough that it's now being spread through Silicon Valley. There are groups in

Mountain View and other parts of the South Bay that have taken this model and have begun to build on it. One of the things talking to staff that is important of this is this is also a venue in which these companies that have highly sensitive and in many ways volatile and potentially enticing targets for terrorists or other groups gives them a chance to talk through emergency planning with the police department. So they're all on the same page with dealing with it. So with that I'll be glad to answer any questions.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Just to follow up with the question that you were -- you were just talking about. That's only in North San José right now. Is it part of downtown as well? Because the description you use of companies I know we have some those same companies that fall into that description in downtown.

>> Bill Ekern: To my understanding this is a North San José effort at this point in time. But I know that the folks that focus on office in the downtown I'm sure will be glad to begin trying to pull this together as well.

>> Councilmember Campos: They may know about it, or they may not, so I think that intrigued me when you said that. Because you mention a few other things that I won't repeat. But it is good for our industry, the business, to know that the police department is there to guide them and give them the tools that they need so that their company is safe.

>> Bill Ekern: That's right, we'll make sure we stretch it that far.

>> Councilmember Campos: Thank you.

>> Mayor Reed: That item of support that is all driven by the businesses. We help them. It's basically they got together they organized, it happened quite a few years ago and it's grown to be very successful. And they have some crazy things that happen up there that they all need to know about, what is the latest way to steal stuff out of your back loading dock, kinds of questions. It's very specific to them, so they are all very interested in it. And

they do call each other and say, we just had an incident in our parking lot, such-and-such a description of a vehicle, and it can go out by e-mail. So it's helpful, but it is a model that's driven by the businesses. Any other comments or questions on that report? I don't think we need to take action. Just a presentation status. Thank you very much, Bill. We'll move to item 7.1, approval purchase and sale agreement for properties allowing development of the North San Pedro housing project. Motion is to approve. All in favor? Opposed? None opposed, that's approved. I think we're done. City Clerk says we're done. We're done. We're adjourned.