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>> Mayor Reed: We've got a quorum so we're going to start. When we're done here we'll adjourn into closed session and then back into open session at 1:30. So to kick off this Alex Gurza.

>> Alex Gurza: Good morning mayor members of the city council, Alex Gurza, Director of Employee Relations. We don't have a PowerPoint this morning. As a recap, what we've been doing in these weekly open session updates is providing you with proposals that have been made by bargaining units from last week to this week. The only proposal we have received is the last contract that was still open which was with the police officers association, and as the council is aware, we are very pleased that we were able to reach a tentative agreement with the Police Officers Association. It is seventh negotiated agreement that we have reached. And it achieves the 10%. Want to mention a couple of things about that agreement. It was a tremendous amount of work by both negotiating teams. Not only with the signature of the tentative agreements on Friday but continuing over the weekend and yesterday in trying to work out the final details of that agreement. The voting of the members represented by the POA begins about right now. And their bylaws require the voting to continue for seven days. So it is on your council agenda on June 14th and they will be able to notify us next Tuesday morning as to whether or not it ratified. Hopefully, it will. And then you will be able to approve it on June 14th in the afternoon session. I think this negotiate agreement really reflects when you have both bargaining teams working on one goal, together, and I think it was very clear working with the POA, that we wanted to reach a negotiated agreement. But we had really one overall goal in mind, and that is to avoid the tier 2 potential layoffs of police officers that could have resulted in an additional 156 police officers being laid off. And that really became the goal of both teams. It's how do we reach an agreement that could avoid that. We'll have a lot more to talk about on the 14th, if it ratifies. But I wanted to take a minute to thank the POA leadership and specifically POA president George Beattie and Vice President Jim Quinlan. They have spent an inordinate amount of hours trying to reach the deal. And after we reach a tentative agreement, their work really only begins in terms of all the ratification and education process, so I want to acknowledge their work in that. And so the tentative agreement is posted online and is available. We did issue a memo last Friday. We will be issuing a supplemental memo, supplemental memo related to two side-letters that were added to the tentative agreement and will be voted by the POA as part of the overall agreement. We are very hopeful that the Police Officers Association membership will ratify the agreement to avoid the tier 2 layoffs of police officers. So that is the end of our presentation this morning.

>> Mayor Reed: Okay. We have some folks who want to speak on this item. We'll take that testimony now. John Mukar, Matt Farrell, and Nancy Ostrowsky.

>> Good morning, mayor and city council, my name is John Mukar, I'm the president of the AEA association of engineers and architects IFPTE local 21. I'm a senior engineer with the city for 20 years. It's funny that just a few days after being stonewalled at the bargaining table on Friday, I wake up this morning and read this quote: The city bent over backwards to work with us. Unfortunately, that quote doesn't come from any employee group in the city. It came from the management of the rep theater. Why is that? For an outside organization, you bend over backwards. But for your own employees you give them the backs of your hands. We've come to the table with real solutions. We've come to the table volunteering pension reform. We've been bending over backwards. The foot dragging by negotiators and the backhanded manner we've been dealt with are not characteristic much an organization that wants to reach an agreement. Maybe you should send the rep theater negotiating team so you have people on both sides of the table who have proven they can bend over backwards to reach and agreement. Thank you.

>> Mayor Reed: Matt Farrell, Nancy Ostrowsky, Kay Denise McKenzie.

>> Good morning, I'd like to speak in support of my fellow IFPTE members asking you to reinsert trust into negotiations around pension reform. What happened last Friday deeply affected our members and compromised the process in my opinion. And I think opened transparent process in terms of pension negotiation would be constructive and helpful at this point. Thank you.

>> Mayor Reed: Nancy Ostrowsky, Kay Denise McKenzie, Greg Job.

>> Good morning, mayor and city council. My name is Nancy Ostrowsky, IFPTE 21 lead negotiator for CAMP, AEA, and AMFP. I've handed the city clerk copies of the Mercury News editorial that was published this morning that admonishes you to stop being disingenuous and fix this mess. We support legal and actuarial sound pension

reform. We have proposed pension reform, only to be rebuffed by your negotiating team. You have done your best to tell the public that we are not for reform and that is a lie. To make sure there is no more confusion as to where we stand, we are formally requesting to have our pension meet and confer sessions to be done in public so that the public will know whether or not you are being disingenuous at the bargaining table. What part of the May 24th council direction did the administration not understand? The last day to put a ballot measure before the voters is 88 days before an election. June 21st is a date pulled out of the air. Why is that deadline for you to negotiate a pension reform solution? Another two weeks have been wasted. Why not schedule a city council meeting the last week of July? And a series of special meetings. To get it right, as opposed to the sloppy error-ridden process you are conducting now. Please, stop playing games. We'd like to come and do this publicly. Thank you.

>> Mayor Reed: Kay Denise McKenzie, Greg Job. Phyllis Dawkins.

>> Good morning, mayor and council. My name is Kay Denise McKenzie, I'm president of CAMP IFPTE local 21. I'm a senior emergency services planner for you, and I've been with the city for 20 years. It's time for each of you to wake up. Just a few short weeks ago, your employees came forward, practically begging you to negotiate with us, on retirement reform. Now, after an eight to three vote directing negotiators to do just that, we're back again pleading for you to have your negotiators bargain in good faith. So what gives? The notion that we should negotiate ballot language before we negotiate the actual change in benefits is absurd. It's like going to a car dealership and having the salesman say you get the sports package, cold weather package, the undercoating six disk sound system and chrome wheels and then he says do you agree to buy it, and if you ask how much it costs, he replies, sign the contract first, and then we'll tell you. It's absurd, and we're quite confident that none of you would enter into any agreement that affects the lives of so many people without knowing how it would affect you. Send your team back to the table. Let's really look at what pension structures work and then let's see if we can construct ballot measures that will let you, the public, and your employees know exactly what they're getting.

>> Mayor Reed: Greg Job. Phyllis Dawkins Thames, Ross Bayer.

>> Good morning, Mayor and city council. My name is Greg Job, and I'm an associate engineer with Public Works for 25 years. I never thought I would be here defending a recommendation from Pete constant, but here I am. He had a set of recommendations on pension reform, recommendations that were adopted by the city council on May 24th. We are having our actuary analyze Councilmember Constant's recommendation, and we are -- want to meet and confer on them. Somehow if city administration believed the only thing to meet and confer on was Mayor Reed's memo. What got lost in translation? The council also directed the administration to meet and confer and evaluate councilmember Rocha's recommendation on pension reform. Again, what got lost in the translation? Councilmembers have the courage to place their names on the ballot and get elected to set policy in this city. The city charter says so. City administration is to implement those policies and directions. Maybe it is time for the council to remind administration of their proper role. And if anyone in the administration wants to make policy they ought to have the courage to run for office. Get elected and round up the votes. If not then do what council has directed you to do. In this instance they have told you to meet and confer over pension reform proposals contained in the mayor's memo and Councilmember Rocha's memo and Councilmember Constant's recommendations. Thanks.

>> Mayor Reed: Phyllis Dawkins Thames, Ross Bayer, Brian Doyle.

>> Good morning, my name is Phyllis Dawkins Thames, I'm a 29 year employee for the City of San JosΘ. I'm on the negotiating committee for CAMP. I'd like to save daw, it's more on the emotional side, I'm heartbroken of where I've seen San JosΘ come in relationship to their employees. I've heard several of you say over the course of the last year that you truly appreciate the efforts and the hard work of the employees of the City of San JosΘ. And I simply ask of you today that you show that appreciation in your efforts at the negotiation table. That you come there honestly, that you come there with respect, in an attempt to reach an agreement that both sides, labor and city -- and the city can swallow. It's as simple as that. Thank you.

>> Mayor Reed: Ross Bayer Brian Doyle, Robert Sapien.

>> Good morning, mayor and councilmembers. My name is Ross Bayer, AMFP secretary and 13-year city employee. Our coalition represents the majority of bargaining units that have reached agreements with the city during both the 2010-11 and 2011-12 negotiations. In each case we reached terms that both met the directives of council and were agreeable to our collective memberships. In spite of these settlements and their having been reached in cooperative manner, in our meeting last Friday city staff advised us that they would be moving forward with the Mayor's ballot initiative regardless of the outcome of any negotiations. They advised us that negotiating pension reform was secondary to the mayor's ballot initiative which was their primary focus at this time. The mayor's ballot initiative effectively eliminates our right to collective bargaining. The city's assistance in pursuing it suggests it is no longer interested in negotiating in good faith. This, in spite of the positive results our group has delivered thus far. Thank you.

>> Mayor Reed: Brian Doyle, Robert Sapien.

>> Good morning, honorable mayor, councilmembers. My name is Brian Doyle. I'm one of the negotiators for the Association of legal professionals. ALP got a letter asking us to meet to discuss the proposed ballot measure. What are we supposed to meet and confer about? The measure appears to have been a fait accompli by six of you for many months now. Apparently you have prevoted that there is now an immutable deadline to bring this measure forward. What's wrong with February as a deadline to put a ballot measure on a state wide election? Why do we have to have a special election? What's the rush? Are the provisions of this ballot measure nonnegotiable with us? If so what aspects are negotiable? Please inform us. Thank you.

>> Mayor Reed: Robert Sapien.

>> Thank you, Robert Sapien representing San Jos  firefighters local 230. I have in front of me a letter dated June 3rd that asking me to schedule a meeting at my earliest convenience if I'd like to talk about a ballot measure. Yet it's been 130 days since you promised to work with us on pension reform. Since that time we've heard talk of fiscal emergency yet those 130 days have not been treated with any urgency whatsoever. I have yet to receive an invitation to have meaningful conversation regarding pension reform. It's clear that there's a political

agenda being driven here. It's clear that great legal questions loom in front of us, that align with that political agenda. What are we trying to do here? Are we trying to solve problems? Or are we trying to drive someone's political agenda? Thank you.

>> Mayor Reed: That concludes the you public testimony. We're going to adjourn into closed session. We'll be back at 1:30 if not before, Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. I had submitted a memo and I was curious if I could get a response to it.

>> Mayor Reed: Well I think we should discuss it in closed session and if the council then elects to have an open session discussion of it, then that would be a council decision. But I think the questions that you raised in your memo as I understand it are issues that are appropriate for closed session discussion. And then a council majority has to decide whether or not to disclose or have further discussion in open session. Let the City Attorney, I'm just reading what the City Attorney had to say about it. So City Attorney, anything to add?

>> City Attorney Doyle: The decision whether to go to open or closed session as the council called. But my recommendation would be to go to closed session to talk about the legal meet-and-confer requirements. Again, though, it is up to the council. My preference would be to go into closed concession to talk about the legal issues.

>> Councilmember Rocha: So legal meet-and-confer on what item?

>> City Attorney Doyle: The ballot measure, the Seal Beach requirements -- when I reference a case it's the Seal Beach case and the legal requirements to go and meet and confer about potential ballot language. At the end of the day, the council direction needs to be clear to staff, and there are some legal issues with respect to that direction. That would be my recommendation. It is up to council to decide what it wants to do but my recommendation is to go into closed session.

>> Councilmember Rocha: Is the ballot measure on the closed session agenda?

>> City Attorney Doyle: It's under labor negotiations generally. So this is all in the context just like this open session item.

>> Councilmember Rocha: Just like this item is.

>> City Attorney Doyle: Labor negotiation update, you have labor negotiations as well on the closed session agenda. The council always has the prerogative to come into open section to have further discussions in open session if it so chooses.

>> Councilmember Rocha: As far as procedure, can we make this here?

>> City Attorney Doyle: If you want to.

>> Councilmember Rocha: Then I move to hear this item in open session.

>> Mayor Reed: All right, we have a motion to further discuss this item in open session. I think we should move into closed session like we typically do, have the discussion and let the council understand the legal issues, any advice of council before the council decides whether or not to have an open session discussion. Councilmember Rocha did you have anything --

>> Councilmember Rocha: No.

>> Mayor Reed: Okay, Councilmember Kalra.

>> Councilmember Kalra: Thank you. Rick, are you indicating again without getting into details that it's just that one narrow issue, that is subject to being discussed in closed session? And not the entire --

>> City Attorney Doyle: Well, that's my concern. My concern is that there is one legal issue that we would -- I would prefer to discuss in closed session. Where the council wants to have a -- its discussion generally, open or closed, it's your call or the council's call. But I would recommend we go into closed session at least initially to have the conversation first.

>> Councilmember Kalra: With the exception of the one legal issue you raised that otherwise it's appropriate for open session public session discussion?

>> City Attorney Doyle: Open or closed, in terms of what council direction is, because the initial direction was done in open session.

>> Councilmember Kalra: Well I understand it's up to the council but what I'm saying is once that one narrow issue, in your opinion that one narrow issue needs to be discussed in closed session.

>> City Attorney Doyle: Yes.

>> Councilmember Kalra: And then after that we need to decide whether open or closed?

>> City Attorney Doyle: It's your call because you're giving direction to your labor negotiators.

>> Councilmember Kalra: So in regards to -- in regards to the meet-and-confer component of it?

>> City Attorney Doyle: Yes, yes. I mean it's really what the legal obligations are vis-a-vis meet-and-confer and clarity on council direction. But you know, some of it I would prefer to have the legal issue discussed in closed session, the open session discussion can be or the other discussion can be open or closed depending on where the council wants to go.

>> Councilmember Kalra: Can you at least --

>> City Attorney Doyle: Or you can instruct to report-out. You've got a breadth of options here.

>> Councilmember Kalra: In order for us to be better informed, can you objectively state what the legal standard is in terms of meet and confer?

>> City Attorney Doyle: I can objectively state that the city has an obligation to meet and confer on the ballot language, and retirement reform generally. But there are -- there is some issues that we want to discuss sort of with respect to each that I believe is best handled in closed session. I mean, everybody knows that there are meet-and-confer obligations. It's a question of scope and what potential risks are and time lines, time sensitivity is another issue.

>> Councilmember Kalra: I understand. I think the concern from my perspective, I don't know if it's the concern of Councilmember Rocha or other councilmembers, this was brought forward publicly and the concern would be that there would be discussions, it would be very challenging to narrow the discussion in closed session to simply the meet-and-confer issue without discussing the memo in greater detail. And so that would be my concern, going forward, if we were to go behind closed doors. And once behind closed doors, the discussion was broadened and then remained behind closed doors. I think that this is something we're talking about potential charter amendment and seasonal issues that need to be discussed in public. And so I think that's where I think there's that tension. We certainly don't want to do anything that puts us or the city at any legal risk, and that's going both ways, whether it should be in closed or open session. We don't want to make a call that we feel on something that we feel should be public and should be open, we want to make sure that we're not being overly broad in considering the Brown Act and what is permissible to be behind closed doors.

>> City Attorney Doyle: Yes and I think under the Brown Act you're on safe ground. This is directing your labor negotiators. You can have a broader conversation, in closed session, and have that same -- and have much of

the same conversation in open session at the same time. You have that flexibility to do it in both places. Again, it's a council call.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: I'm concerned about that, we can have that in open session, so we would have to formally agendize this, two weeks out? June 21st, what we would be looking at?

>> City Attorney Doyle: No, I'm comfortable with the breadth of the issue as labor negotiations update. There have been labor negotiations update regarding POA and retirement. And as far as there are issues to that or relevant to that you can have that discussion here.

>> Councilmember Rocha: When would we discuss that in open session? We could adjourn in closed and come back out here?

>> City Attorney Doyle: You could do that. You have that ability, you adjourned into closed session, you can always come back into open session.

>> Councilmember Rocha: What about the 1:30?

>> City Attorney Doyle: You can say you are continuing the matter to a later time. The important thing is it's on the agenda. Whether you talk about it in closed session, open session the morning or this afternoon you have that flexibility.

>> Councilmember Rocha: As far as the direction on the three different proposals there's a significant amount of information but we're suggesting we go into closed session to talk about one small component of that --

>> City Attorney Doyle: Well I don't want to say that it's limited to the that one small component. My concern is a legal issue that's related to one small component but you're probably going to have to talk about a broader conversation, to address that one small component. After that if the council wants to continue to have conversations in closed session or come into open session that's really your call but you can make that call once you're in closed session.

>> Councilmember Rocha: Can I include my motion or amend my motion I just made to include direction to return to open session?

>> City Attorney Doyle: You asking me?

>> Councilmember Rocha: Yes.

>> City Attorney Doyle: Yes, if it's okay to the seconder.

>> Councilmember Rocha: Hold on, so give me a second. So I move --

>> Mayor Reed: So the motion would be that we adjourn into closed session but we're not done with this item 3.2. We would come back into open session to finish the discussion on 3.2. If I understand the direction you're trying to go with the motion.

>> Councilmember Rocha: And then I'll ask for that in the afternoon session if possible. Assuming we're probably going to be in closed session for some time.

>> Mayor Reed: Yes, we do have a lengthy closed session agenda of a variety of things.

>> Councilmember Rocha: Okay, thank you.

>> Mayor Reed: Okay, so that's the motion as amended. Councilmember Herrera and Liccardo.

>> Councilmember Herrera: Or we could adjourn deal with this one issue and come back out into open session to deal with this since we have a lot of public here. I think that's what we should do.

>> Councilmember Rocha: I'm comfortable with that.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: I wonder if it -- part of the problem is, is that I don't know exactly what we're voting on in closed session. In terms of what we're going to waive and what we're not going to waive. It might be helpful if I think given the fact there are a lot of folks who need to hear from council today, if we were to agree on a process to get word out today. Either through the City Manager or through Alex. Through some formal response to the variety of questions that have been raised here and perhaps others that would be raised. We can do that collectively as a body. I think the problem is if we agree now to have the conversation in open session, we've already agreed to waive things that we don't know. I think promise we don't know exactly I don't know having not gone into closed session yet exactly what the risks are. I'd feel much more comfortable with the process that said, let's have all the questions that have been raised squarely addressed today. Whether that happens to a conversation in open session or directly through the City Manager, I think that will be determined in our vote in closed session.

>> Mayor Reed: City Attorney did you have a --

>> City Attorney Doyle: Well I think you have the option in closed session to say what you'd want to come back and report-out. Whether it's having additional conversation about direction or directing staff to report-out what you want them to report-out. If you're not necessarily coming out here and going to waive any privilege, you -- again there's a lot of flexibility here. I just -- personally here, one issue I believe best handled in closed session and then can you have the conversation either in closed session or in open session.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. This is a rare circumstance. I've never seen an item placed on the agenda like this, and I know we typically have a procedure where you sort of go to rules where you want to bring up topics to bring the council. I'm not clear exactly what we're supposed to be discussing. I'm left in a loop. Certainly don't mind chatting about anything out here but still I'm not clear what we're doing. So --

>> City Attorney Doyle: Councilmember, the Brown Act requires you put people on notice the public on notice that you're going to be talking about a certain topic or subject. The standing item is labor negotiations update. And it's what times of -- or what negotiation have taken place over the last week. There are at least two, there's the POA negotiations and then there's retirement discussions. I think insofar as anything's germane to those items it's proper to talk about them. You have a standing item and I think the public knows and public shows up and you can have that conversation.

>> Councilmember Oliverio: So being this has never been done before --

>> City Attorney Doyle: Not that you're getting specific action but you can at least have the conversation and go from there.

>> Councilmember Oliverio: So I just want to know going forward I can submit a single signature memo on Friday, Monday, before any council meeting on labor negotiations or the City Manager report any day?

>> City Attorney Doyle: Well depends on what the scope of that memo is.

>> Councilmember Oliverio: Well could you tell the me what the memo could include because I'm just --

>> City Attorney Doyle: I think in this case Councilmember Rocha has submitted a memo which addresses concerns about the scope of the direction to staff regarding the retirement reform. There have been retirement reform negotiations at least an attempt at such last week. I think it's -- it's relevant to what the item is on the agenda.

>> Councilmember Oliverio: Could one write the same memo every week and submit it every week?

>> City Attorney Doyle: Insofar as there are discussions related to those type of negotiations, they could -- they can submit them and you could discuss it, yes. But it's not something that happens every week. So I think in this case, it's appropriate.

>> Councilmember Oliverio: Fair but in this case it's appropriate but I'm just saying going forward, any one of the councilmembers could write a memo every week in regards to this posted item on the agenda?

>> City Attorney Doyle: And depending on what the content of the memo was, you could probably have a discussion on it, yes.

>> Councilmember Oliverio: Thank you.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: First off I want to agree with what Sam said. I think we are attempting to presuppose what we might or might talk about what we might or might not decide in closed session which I'm not comfortable with. So I urge my colleagues to not vote in favor of this and let's go through our normal course of action where we give direction, determine what we're going to bring out whether it's direction to city staff or it's discussion or it's a report-out. We have multiple ways we can go. I'm intrigued by Pierluigi's questioning because if I'm understanding the interpretation right since we have a standing item of the City Manager's report, I could any week put out a memo asking to talk about anything the City Manager did that week and bring it up for a council

discussion if I put it out on the Friday night before. And I -- so I'm just worried that without going through the formal process of determining what we're going to do under our normal operating guidelines, we open up this Pandora's box of last minute memos and unpredictable discussions. And that's my worry after hearing what Pierluigi had to say. So with that, I just urge everyone to not support this motion, let's do our normal course of business and either report-out, we have the opportunity since it's on the agenda to come -- to still discuss it this afternoon, if we as a collective body think that's the appropriate thing to do or give direction.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: I think we're good about to decide as a collective body whether or not we would be agreeable to coming back to open session after we discuss the legal issue that the City Attorney has raised. I certainly don't want to set a precedent of every week we can sort of vary from the agenda and do this. But this is a very unprecedented decision and we are making some decisions that are going to affect our city and affect our residents and I want to have the best opportunity to be able to resolve this in a good working written with our employees. They've come here today, they're here I think we need to come -- I am going to vote yes on this, I want to come back into open session. It doesn't mean we have to waive anything when we come back here. We're certainly going to have a discussion in closed session about what when we come back here but I want a decision this morning, I want it when everybody is here.

>> Mayor Reed: Okay, I think that's the discussion. We have a motion on the floor. Further discussion on the motion? All in favor? Opposed? I count Constant opposed, Liccardo opposed, so that passes 9-2. I think everybody is here, 9-2. Okay, so we're going to adjourn into closed session, and we'll be back sometime. [Closed session]

>> Mayor Reed: (gavel strike) Good afternoon. I'd like to call the San José city council meeting to order for June 7th, 2011. We will start with an invocation. We have Councilmember Oliverio is going to introduce the invocator, I believe.

>> Councilmember Oliverio: Thank you, Mayor Reed. It is my pleasure to introduce pastor Scott Simmerock, of church on the hill. Church on the hill is located in District 6, in the beautiful Canoas Gardens neighborhood. Pastor.

>> Thank you for letting me be here today. I'm grateful and honored to be here and I will be brief. Just three or four minutes. I'd like to explain something though. Three years ago, we received a call in my church office from Jamie Matthews, the manager of the code enforcement division. He called us to let us know that he just cited an elderly couple for blight for their house because they were not able to keep it up. The story behind it was this, this was an olders couple suffering from congestive heart failure. They didn't have the means to keep this up. They called my office and said how can you help? It took two weekends to re-landscape and re-paint the outside of their house. And that was three years ago. What I didn't know was that there were about 12 people in our church, that decided that they were going to adopt that house and for the last three years serves that family by simply doing the upkeep on their house. I tell you that story not to brag about a group of people that I like to call church, but because the church, in the eyes of the community, is sometimes confusing at times. And I'd like to provide eligibility of clarity before I pray today. The leadership in our city and the leadership of our church often have a lot in common. And instead of talking about our differences I'd love to point out what our church leadership and our city leadership have in exonerate. First is this: All of us got into leadership because we believed we could make a positive difference in our community, right? None of us got into it if we thought we would fail, but we didn't realize how tough it would be to lead and those that would oppose us. Something else we have in common: We both need organizations that have been around for 160-plus years. You see, in 1850, when California became a state, church on the hill had its first meeting with people with the last name Branham, Bascom, Gish and Snelling. Another thing that we have in common with leadership of church and city is that we all deal with public policy to clarify, give structure and public policy is messy and complicated. Let me make this really clear. We need policy because people have a tremendous capacity to be creative and work around the heart of the law. I wanted

to prepare for this invocation, mainly I wanted this: I wanted to make sure that I was properly dressed today. So I went on City Council's Website and the agenda for the meeting just to check out some policies that you have. Apparently I just need shoes and a shirt to be here today. But I ran across the public policy for the audience. And here's what it reads: Persons in the audience will refrain from behavior which will disrupt the public meeting. I thought that that was pretty clear, but because public policy is messy it continues: This will include make loud noises, clapping, shouting, booing, hissing or engaging in any other activity in a manner that disrupts, disturbs or impedes the orderly conduct of the meetings. The clarity of the policy is necessary because people have a tremendous capacity to be creative and work around the heart of the law. I think we all recognize that these particular policies are not for the good citizens of San José, but for our friends that visit from places like Fremont and Sunnyvale, right? That wasn't politically correct. I point all this out and I will pray in just a moment, but I point this out because the role of the church and the community has gotten lost in policy. I don't mean city policy, I mean church policy. God gave us ten policies, we call them the ten commandments, they were billed built into 613 laws and books about those laws were written and then there's the prophet that came along and said, no, there's six things that really matter. Another prophet came along named Micah and said there's three things, let's boil it down to three things. And he said this: Act justly, love mercy, walk humbly with God. And then along comes Jesus, and of which I'm clearly a fan, and he says, there's two things that matter. Love God, and love your neighbor. How's that for the public policy of a church? We're simply going to love God, and love, protect and serve our neighbors and that's where I think our city and our church, we have common ground. So months ago, we called up the city and tell us, how can we help? How can we serve people in our city? And we were pointed to a little triangular piece of land off the 101 that borders up against a sound wall of the freeway. This is an eyesore to the community. Help. And so we did. But as we did, and cleaned that up, what happened was we found out the story behind it was this: Second harvest food bank distributes food to that lower-income community. They were going to shut that down because they had no place for people to gather and pass out food. And so a group of high schoolers and college students from our church found out about that and said, they said, pastor, we don't need your help. These young people said we will clean it up and hopefully, get permission to build space there for people to gather. So that they can pass out food. And have a resource. This is the church that I belong to. So today and I will pray in just a moment here, I simply wanted to share a few stories that make me proud to be a pastor in this city. I'm proud of my people, and I'm proud of this city. And I want to pray today that God would

bless, and I also wanted to do this: I wanted to clarify the public policy of the church. At least our church. It's here to love our neighbor. And to serve and protect them well. And because we have common ground in that I'm really excited to be here today. And I believe that our church is a partner to this city. So let me invite God to be a part of this. Would you allow me to pray for just a moment: God, I would ask your blessing today. On Mayor Reed, and all these councilmembers, God, these are not just leaders of our city. God, these are men and women who are wives and husbands, fathers, mothers, grandparents, they're sons and daughters. God, these are leaders but they're also people, real people, God. We know that they have real lives and today, they face real challenges. God, give them wisdom to lead well. God, give them grace to those who oppose them. I pray that you give them insight to what lies ahead for the city. Got I just pray very personally that you will give them friends that will love and support them without an ulterior agenda for them. Surround them with people who will love and support them for just being them. God I would pray that you give them a clear sense that you are for them. God, bless this city, and I pray this in the name of Jesus who makes all this possible, amen. Thank you for having me.

>> Mayor Reed: Thank you, pastor Simmerock. Next, we have the pledge of allegiance. We have some third graders. Church of the apostles, queen of the apostles, Councilmember Constant's district undoubtedly, district 1. They're going to help us with the pledge. Please stand. [pledge of allegiance]

>> Mayor Reed: First item of business are the orders of the day. We need to defer items 2.3 D and E, Rules and Open Government Committee reports from May 4th and April 27th to June 14th. Any other changes to the agenda order? Motion is to approve the orders of the day. All in favor, opposed, none opposed, those are approved. Closed session report would be next, I have a couple of items to report out of closed session. First we're pleased to announce that the city council has designated Richard Keith to lead the Redevelopment Agency following the retirement of Harry Mavrogenes. Richard is here, Richard, thank you very much. [applause]

>> Mayor Reed: The other item to report out of closed session is a report regarding some labor negotiations matter. We've heard the concerns from our bargaining units regarding time lines and processes related to retirement reform. The city council has provided staff direction to work with the bargaining units on potentially giving more time to the process, for the good of the city, and to provide capacity to talk about both issues

together. The potential ballot measure and negotiations on broader retirement reform issues. This may or may not include moving the November time frame for a ballot measure. Staff will be contacting the bargaining units to discuss this further. However, I want to make it clear that we're under a tight time frame, and that there's urgency around this issue and needing to address our retirement costs prior to fiscal year 2012-13. Any process must ensure that we reach a resolution before the budget process begins for 2012-13. We also recognize that the Police Officers Association has not concluded voting on the tentative agreement recently reached and we want them to know that we are very appreciative of their work in reaching a tentative agreement that would avoid the layoffs of another 156 officers. We want to ensure there's time to work with them, the POA, and all of our other bargaining units as well. We appreciate those bargaining units who have asked us to begin negotiations on retirement reform which includes AEA, CAMP, AMSP and the San José firefighters. Staff will be following up on all of our bargaining units to work on a possible framework for the negotiations and we'll be reporting back to the city council, not later than the June 21st on those discussions. That concludes the report-out of closed session. City Attorney, anything to add?

>> City Attorney Doyle: Just other than note that we will be reconvening in closed session to finish up the agenda.

>> Mayor Reed: Oh, that's right, we didn't get done, did we? Next item, ceremonial items, I'd like to start by inviting Councilmember Chu, Councilmember Campos and Enrique Flores to join me at the podium. Today we're commending Enrique Flores for his commitment to make quality educational experiences available for underprivileged youth and supporting our community as founder and director of Eastside heroes. Councilmember Chu has some of the details.

>> Councilmember Chu: thank you, mayor. I'd like to thank my colleagues and the mayor in joining me to commend Enrique Flores for his commitment to make quality education experiences available to underprivileged youth. Enrique received this year's center of spiritual enlightenment community service award for his outstanding service to our community. Enrique grew up in East San José where he was exposed to gang violence, poverty and disadvantaged education system. Graduating from Santa Clara University, for both his bachelor and master

degree, in counseling, Enrique continued to support with little means by funding Eastside heroes. Eastside heroes is the nonprofit volunteer-run organization aimed to make quality educational experiences available for underprivileged youth through mentorship and assisting youth with the development of leadership skills. Eastside heroes have received over \$200,000 since its inception in 2003. As founder and director of Eastside heroes, Enrique is constantly working to empower at-risk youth in San José, to be their own solution in solving community problems. I commend Enrique for his dedication and devotion to make quality education and resources available and attainable to all youth, and their families. By helping tomorrow's leaders today, he is changing the future. So I will ask the mayor to do the honor, present the commendation to Enrique Flores. [applause]

>> Good afternoon, everybody. As many of you as well as myself for you know concerned about the rising violence in the city, I want to bring everybody back to the '80s and early '90s a time when I grew up. There was a lot more gang violence at that time. Believe it or not. And that's when project crack down, the city did an awesome job of stopping the first gang, street gang war in San José. For the larger city. And I'm 100% confident that -- and at that time there was you know low police numbers as well. And I'm 100% confident the city can maintain security, even through this economic downturn, as well. We did it once. We can do it again. So what helped save my life, and those hours away from prison, like all my friends, and other destructive choices was education. I was granted a scholarship to go to Bellarmine college prep in 10th grade and while at Bellarmine I received extra mentoring from a counselor. Rob Suarez who passed away a few years later. So the education/mentoring, in addition to leadership development through service projects, Bellarmine and San José university both include community service and there's where I discovered a passion for service and dedicated the rest of my life for that. I tried to pay it forward by providing educational scholarships to private schools as well as leadership development via service projects. Supervisor Dave Cortese contracted Eastside heroes, to lead the way in the Corazon project, so in East San José we were mobilizing some teenagers in the Orfill area to do unity days where we collected, with the help of the sheriff's office, ten guns, about 100 rounds of ammunition and two bags full of gang colors that the teenagers turned in. So stay tuned through more of that leadership development through service projects and those teenagers are being the solution to the current problems, and not just something that we need to fix. Thank you very much, to councilmembers and the mayor for this time. Thank you very much. [applause]

>> Mayor Reed: Next item is the consent calendar. Any requests from the public to speak on the consent calendar? None. Councilmember Constant would like to pull item 2.6. Anybody else? All right, we have a motion to approve the balance of the consent calendar. All in favor, opposed, none opposed, item 2.6 then we need to take up.

>> Councilmember Constant: Thank you, mayor. I wanted to give a couple of items from the Police and Fire retirement meeting last weeks. There's a couple issues that I think the council should be made aware of. One is there still seems to be a little bit of confusion on the contributions rate for the health care, retiree health care contributions. The unfunded liability contributions. As we've discussed before the actuarial valuations set an employee and employer contribution rate that is a dollar amount. That dollar amount is then converted to a percentage of payroll, of pay I mean, for ease of being able to apply it to each individual employee. But at a time when we have declining workforce often using percentage of pay as a means to pay the contribution rates on the City's behalf ends up paying an amount that is less than the actuarially needed contribution. We've had a discussion before at the council level and made it, I think it was a pretty clear statements that in regards to pension contributions that we would be making the greater of the two amounts as to not increase any future unfunded liabilities. There seems to be some confusion as whether we meant that to apply to the retiree health care contributions as well. So I think it's something that we need to pay attention to, so that we don't inadvertently create any ongoing increased unfunded liabilities. Because I'd like to remind everyone that our percentage of funding on both sides, Police and Fire and Federated are in the single digits, they're very low funding levels and that scenario we can't afford and I know there was some confusion out of the city attorney's office because of a memo that came out of the city attorney's office I gist bring that up so we're all consciously aware of it and we can have the appropriate discussions. Next there was an issue that the board was having quite a vigorous discussion on, the guidelines that guide the voting of boards and commissions. We all know that here, we operate under the rules that a quorum is six of us to meet and take action. We also abide by the rules that it takes six of us to physically take action on any one item. You need a majority of the board. There's a movement by some of the board members a discussion that they think it should be a majority of the persons in attendance at the meeting which would have significant impacts on how decisions are made. I think it's relatively clear in our municipal code,

what the requirements to take action are, and that is, a majority of the entire board. But I wanted to make sure that everyone is aware, that that's a discussion that's going on, and the conflicts counsel has opined verbally at least that there is some ambiguity in our municipal code as it relates to having a quorum versus taking action. And I think that's something given all the work that we've done on our retirement board governance it is something that we need to make sure is crystal clear. And I think that some of the board members clearly understand that they should be operating under the same rules that the county operates on since we take our guidance from the same provisions in our law. So I think that's important. The board also had further discussions on the Cortex governance report. You may remember that we took action on a portion of the Cortex governance report to create the board composition so that there's a majority of outside members who are independent of the city in the employee groups and have expertise in their areas of either investing or actuarial science or underwriting. There's a variety of areas that we laid out. There were several other items in that report that were not necessarily directly addressed by the council. The Police and Fire board is scheduling a retreat to discuss some of the other recommendations in the board and potentially also look for other governance structure changes such as the independence of the board and the formation of an audit committee and other things of that nature. They have invited the Federated board to join them for a half-day of the full-day retreat to discuss those matters that overlap between both of the boards. And then finally, on a related note, as I mentioned, the main action that we took was that structure of the board bringing outside, independent persons to the board. However, there is a little wrinkle in that and some uncertainty on the board and some of the new board members are feeling a little uneasy regarding government code section 7513.95, which states and I'll quote it because it's fairly short and then tell you the concern. It states "a member or employee of the board shall not directly or indirectly by himself or herself or as an agent, partner or employee of a person or entity other than the board sell or provide any investment product that would be considered an asset of the fund to any public retirement system in California." Given that a majority of each of the boards have members that are investment professionals, that work for significantly large firms, the impacts of this government code can be extensive. Because there's tentacles that reach out from corporate actions and investment actions that a person on the board may or may not be aware of. It's important to note that this is separate from the government code 1090 section that also has implications. The boards asked for their conflict counsel to write an opinion, based on a set of hypothetical set of situations that could occur given a person's work in the field. And there were seven hypothetical situations that were analyzed, the conflicts counsel

of those seven found that five of them could and most likely would violate that government code section. One may violate. And one may not. None of them were clearly not violations. This has given quite a bit of uncertainty on the board for the new, independent board members. They're concerned on how their actions may or may not be interpreted by some other agency outside of the City of San José, under review of the impacts it could have to their private businesses. The outside counsel recommends that there's a request for a clarification opinion from the California attorney general, of course the boards independently cannot make that recommendation but the city council can. And I personally suggest that we do. It would be important, given the weight that we've put on the changes in the composition of the boards and the serious issues that we have in front of us, in the pension systems on a lot of levels, not only the unfunded liability issues that we seem to be wrangling with. So after all of that summary, I would like to make a motion that the council accepts my report, and directs the City Attorney to look into the possibility of requesting that opinion from the attorney general and reporting back to the Rules Committee if that's a possibility for us to do.

>> Mayor Reed: Okay. Motion on the floor. Discussion? Councilmember Pyle.

>> Councilmember Pyle: Could any of this be put in writing? I mean I had no idea, there is no inclusion in here whatsoever in reference to this. I would feel much more comfortable if we could delay it a week and I could see exactly what it is that you're talking about. I've been taking notes but I can't write as quickly as can you speak.

>> Councilmember Constant: All of this is written in the retirement boards' packets and there's a written legal opinion. I would much rather you rely on that, than my verbal update. My understanding is, this is simply for me to keep you abreast of things that are happening so that you'll be aware. I'd much rather --

>> Councilmember Pyle: You're asking us to take a vote on an item that we have no knowledge of.

>> Councilmember Constant: No, it was just direction to the City Attorney look into it and get back to the Rules Committee.

>> Mayor Reed: It's a referral to the staff to come back to Rules Committee with the kind of details that you'll need before you can make a decision.

>> City Attorney Doyle: And councilmember any memo we produce we'll CC the entire city council.

>> Mayor Reed: Okay, anybody else? On the motion? All in favor? Opposed, none opposed, we don't have a time frame for getting that to the Rules Committee but City Attorney is well aware of the issue. That concludes, then, the consent calendar. Taking us to item 3.1. Report of the City Manager.

>> City Manager Figone: Thank you, Mr. Mayor, members of the council. I to have one of report. I do want to let the council know I have ordered the flags to be flown at half staff in recognition of the loss of the two San Francisco firefighters who died last Thursday. As you know by this point, both men were fighting a two-alarm house fire in the diamond heights section of San Francisco when superheated gases caused a flash fire. This tragedy is a powerful reminder that the work of our firefighters day in and day out is often very routine on the surface because they're so good at what they do. In fact it is highly dangerous work. San José fire department has already had a tremendous outpouring of support to San Francisco fire department. Additionally, eight off-duty San José firefighters and two engines along with the fire department honor guard will be attending the memorial service in honor of the two fallen firefighters that risked -- and the risk that all firefighters and their families take every day. Again all city flags are being flown at half staff until Friday when the memorial service is scheduled to occur. That concludes my report.

>> Mayor Reed: Item 3.3 is next, the council salary setting commission recommendations. Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. Give me a second to get to the right page here. Are we going to have a presentation on this? Staff is here to answer questions. This is not a staff recommendation, this is from the commission, which is this is set up by the charter to make these recommendations every other year.

>> Councilmember Constant: Okay. Thank you, mayor.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: First of all I want to thank the salary setting commission and the City Clerk and the city attorney's office for the work they did. I know that many of us had the opportunity to sit down with the commission and discuss our concerns, and give our input along with the input that was given from a number of persons of the general public. As I contemplated this issue, and I had the opportunity to look into some of the issues particularly in the area of the pension systems, I asked for this to be deferred a few weeks ago so I could do some additional research. In doing that research, I was able to obtain the valuation report of the Cal PERS retirement system plan that elected officials participate in, or at least elected officials have the opportunity to participate in. And when I referred to that, and went through it in detail, actually found some information I found to be fairly shocking one is the fact that the plan that we belong to has an unfunded liability of approximately \$450,000. When you compare that to the billions that we have in our other plans it may not seem much. But if you calculate it on a per capita basis of how many participants in the plan both active and retired you'd see it is of very comparable magnitude. Also, I notice that the contribution rate has been steadily increasing on the employer's side and is now up to 16% on the employee side, with a 7% from the elected officials' side. Based on that I really think that we have an obligation to reform our pension system as well. The memo that I'm putting forward, that I'll make a motion on in a moment, basically says that we should, for newly elected councilmembers, put them into a new tier of -- for new employees, and that is that they would be limited to participation in the city apples PTC 457 defined contribution plan, that the City Attorney should seek a determination from Cal PERS clarifying the method by which we can either individually or collectively opt out from participation in the Cal PERS retirement plan for future councilmembers. It's my understanding that the contract that we have with Cal PERS is fairly unique. It's not similar to the one that major, large employers have with Cal PERS so we do have to get some information on them on how we can do that. And that we ask the City Attorney and the City Clerk to research all the possible options that we have for discontinuance. And I list a various number of items for them to look into. I think this is important, one we have time now before the next election, this is the time for us to be looking into these issues. I

think it's also appropriate, given all the attention that retirements and their unfunded liabilities have had, both statewide, nationally, regionally and of course here in our own backyard for our city employees. So with that, I'd like to make a motion to move my memorandum forward.

>> Mayor Reed: A motion on the floor. Councilmember Pyle.

>> Councilmember Pyle: Thank you. I just would like to make a suggestion, that first of all, we know the numerator in reference to the situation with the state. We're talking about \$450,000, over whatever that denominator may be. The number of members statewide. Do you have that number?

>> Councilmember Constant: That unfunded liability is just for us. That has nothing to do with any other persons. It's just the members of this plan, which are the elected members, current and currently retired from our positions.

>> Councilmember Pyle: So you're saying that from 11 people, we come up with a \$450,000 liability?

>> Councilmember Constant: That's correct.

>> Mayor Reed: Well, it's 11 people plus those previous councilmembers. So it's probably quite a bit more than 11.

>> Councilmember Pyle: How far back are we counting?

>> Councilmember Constant: It's just like our retirement system. It takes into account all of the liabilities of the plan.

>> Mayor Reed: There's a year in which we first went in --

>> City Attorney Doyle: When did we first begin?

>> November of 1998.

>> Councilmember Pyle: I think your aims are noble. However, I need to see more information. I haven't had a chance to really plow through this as much as would I like to have, and I just don't -- I think once again if we could have a little more time to vet this. I would be much more comfortable with it.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you very much, I want to thank Councilmember Constant for doing such extensive research on our pension. I don't believe, while stated in his memo that while our benefit is significantly less than the benefit provided for either Federated or Police and Fire retirement, and also indicated that this plan has no imminent threat to the General Fund, so I question what is the benefit to the citizens of San José to keep cutting the benefit and the salary of our elected body. My colleagues in the council like to compare the government agencies versus the private sectors. Whether we come to talking about the laying off, the cutting down the retirement system, and so on, so forth. And my experience in the private sector, I don't see any company, you know, any higher level managers in any private company with the responsibility that we have here, in this body, got compensated for what was suggested in the memo. So I believe that when we are talking about comparing the government to the private sector maybe it's best to start it from the top instead of from the bottom. I'm really deeply concerned, by keep continually cutting the compensation and the benefit of this council. We will make it -- this position only available to the very privileged group, retired or drawing some other pensions or they have a second job, and don't really care about this -- the compensation and the salary. To encourage younger people, or more diverse people, I shouldn't say younger people, but more diverse people, willing to come out and run for the city council member, I don't support, you know, just cutting our benefit and salary especially when there is really no threat to the General Fund. Another thing, we may be looking at it, is to consider eliminating the stunt for the elected councilmember to take a moonlighting job so they'd be able to concentrating more of their effort on the city business, you know, when we have time to give them some time to

relax a little bit, when they have really no city business to attend, relax their mind, relax their body and also -- and also you know, give them some time to replenish themselves so I will not be supporting the motion.

>> Mayor Reed: City Attorney can you comment a little bit on what we're able to do with the salary setting commission recommendation? Because Councilmember Constant's motion contemplates moving the salary setting commission's report with some modifications. And as I understand it, we can make modifications from the recommendation but onlien in one direction.

>> City Attorney Doyle: Yes, usually downward, but that's on salary, that's not on other forms of compensation. I'm going to ask Ms. Herrick to address this since she staffs the commission.

>> Lisa Herrick: That's correct. The charter talks about both compensation and salary, but in terms of the limitations of council in accepting the commission's report, the council's limited to accepting the recommended or a reduced amount in salary only. As to any other components of compensation, that's up to the council.

>> Mayor Reed: But it has been I think city attorney's interpretation that the auto allowance is treated the same as salary, is that right?

>> City Attorney Doyle: I think in the past we have and the issue is retirement. And we're treating retirement as separate from the salary.

>> Mayor Reed: Okay. Then I'm going to support Councilmember Constant's memo because it really is tracking the recommendations from the salary setting commission on retirement and asking for the analysis of the possibility of us existing members opting out or opting in, or other things that we ought to consider doing, because I think it's important to consider considering the unfunded liability is growing in this plan, and the city's contribution employer side is growing on an annual basis that does come out of the -- straight out of the General Fund. And something we should be concerned about, although it's not large numbers it nevertheless is something that we need to look at. So I'm going to support Councilmember Constant on this, Councilmember Liccardo?

>> Councilmember Liccardo: I'm also supportive of the direction. I have a question though for Councilmember Constant or actually anyone on staff. Just in regard to recommendation 1. Are there other defined contribution plans out there, I don't know if Alex or anyone can respond. I'm just wondering if we're being too prescriptive here rather than asking staff to look at the panoply of options that might be out there particularly as we're exploring those options for our own employees what the options are.

>> Councilmember Constant: Sam, maybe I could just amend my motions and add the words, "or similar contribution plan."

>> Councilmember Liccardo: I'm much happier with that language.

>> Mayor Reed: Okay with the seconder, Councilmember Oliverio? That's modified slightly. Back to -- you're done Councilmember Liccardo? Councilmember Rocha.

>> Councilmember Rocha: Thank you. So as I understand it, we're going to be acting on the first one, this is not going to be returning to council for consideration in final totality, it's just going to be -- item 3 is going to return, item 1 and 2 will be approved today?

>> Mayor Reed: That is the recommendation of the motion.

>> Councilmember Rocha: Okay. Well, I'm going to be supporting at least as far as I can tell right now, the salary setting commission recommendation, and let me chew on this for a moment. I'm -- my preference is honestly to find some set salary for councilmembers that takes it out of the hands of us, and a commission, not because they do great work, but I'd rather see us kind of define some number, whether it's in between the lowest-paid employee, fully benefited and the highest paid employee and some number in between that we can just set and follow that and not have to put ourselves through this annually or biannually, and that could be further direction and we might want to consider that at some point. So thank you.

>> Mayor Reed: I think that's universal. Everybody who is faced with this for the first time says, why are we doing this? So welcome to the club, Councilmember Rocha. I think this is the first time you've had to deal with this. That tends to be the way we always ask that question. Councilmember Herrera.

>> Councilmember Herrera: I'm going to support the motion but like did ideas of having some alternatives in terms of this defined plan. I think that it's important for us to set an example but on the other hand, I think that we need to be careful about this continuing down grading of especially wages for councilmembers. I really -- I agree with Councilmember Chu, that if we continue this, that it's going to be much more difficult for ordinary people to be able to run for this office and live on this salary. They're going to have to find other jobs or it's just going to be people who don't have -- or independently wealthy I guess who sit on this council. I think that is something we should be concerned about. I support what Councilmember Rocha said. I think the ultimate conclusion is for this not to be decided by councils. It is very difficult for councils to sit here and have to make that decision. I think it becomes way too political, and I think we should move in that direction. I don't know what kind of action we need to do that. We should have something done so that it would not benefit anyone here but it would benefit future councils. Because I think we do a disservice to continually I coming in here every two years and trying to out do each other, I'm not saying it's happening here but in the past, of how much we can cut. Because this does influence who is going to be able to run for these positions in the future.

>> Mayor Reed: Vice Mayor Nguyen.

>> Councilmember Nguyen: Thank you. I'm going to support the motion. I want to thank Councilmember Constant for putting out this memo. I think it's important that when we are asking all of the bargaining units to look at retirement reform that we should do the same thing for us and for future councilmembers. But I also agree with Councilmember Liccardo that we should come up with some type of or there should be some type of alternative plan and not just have one plan exclusively. So I'll be supporting the motion, thank you.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: City Attorney, to do this would require changing the city charter and you've always talked about so much, that needs to be cleaned up in the charter and possibly putting one item that cleans up multiple portions. Could this be included in something like that or this would have to stand alone?

>> City Attorney Doyle: No, we could come back with a variety of cleanups if you want to call them that. We've had proposals in the past to do that. The county Board of Supervisors for example pegs their salary to a percentage of judges of the superior court. It's sort of an objective, it's outside of anybody's control in that respect. There's ways that we can look at that. We've had proposals in the past and if council wants us to pursue any recommendations or come back with information we can do that.

>> Councilmember Oliverio: I raise the question because it's obviously a cost to change it but if it can be grouped with other things to your view do you ever believe there needs to be discussion on cleanup of the charter and what those would be tweaks whatever you would want to call it?

>> City Attorney Doyle: Yes, in some respects, I think but that's really a philosophical discussion where you want to make those changes. It is a 1965 charter with various amendments over the years. It's something, you know, there are things you may want to look at. Things such as instant runoff. Things such as salary-setting and there are other, a whole host of things that we could look at to try to bring us into, what I would say try to bring us into the 21st century.

>> Councilmember Oliverio: And the Ama-zoma moon. Okay, thank you.

>> Mayor Reed: I think Lisa Herrick already has the memo written from the last time we considered the salary part of this as a change. It requires a charter change, and there was an expense, and the council cited that, along with several other possible charter changes just weren't worth the expense of doing that. But we have looked at it, I forget, it was like three or four years ago, I can't remember, but we could certainly look at it again. It's up to the council. Councilmember Constant.

>> Councilmember Constant: Thanks. I just wanted to make the point that I don't think it really applies to compare us to corporate America. Because really, that's what our executives in the City Manager's office should be compared to. We really should be compared to corporate boards of directors because we give policy direction. We're not the executives that are executing things. And also, but if we are going to make that none of them get a defined benefit plan. They all have a defined contribution plan similar to our PTC plan or another defined contribution plan. So -- and I think that if you look at the history of defined benefit plans they were never designed for short term glows. Actuarially, they cannot stay funded when you have people that are employed for 30 or 40 years. We have a system that works against itself because of the term limits and the short terminator of our employment with the City of San José.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you. And I don't necessarily agree with that last point because it's a constant number of employees feeding into it and that's the distinction between having a fluctuation of people coming into city employment serving a number of years. I don't think that's necessarily the case here. But yeah, I think the concern that's being raised about being able to attract people to city service, that same argument applies to attracting people to work for the city. And the distinction that we have here, we're here temporarily. Even if you get reelected, eight years you're here. This is not our career. So I think it's yes, lead by example, all that's important. But the reality is, the sacrifices we're asking are much greater of our employees than we're doing. I didn't take this job or run for office for the money. I don't think any of us did. We get paid less than the average, I believe at this point it certainly will be less than the average city employee or at least on par with the rest of the employees also take those cuts. But in the good thing about it is that we also represent different backgrounds, we come from different careers, and it affects all of us differently. And I know that when we talk about 10%, I know how much that affects me, and that helps me to relate to the employees. It caused me to leave my home because I couldn't afford my mortgage. That's happened to a lot of our employees, too, and so we have to keep that in mind when we talk about 10%. It's just 10%. 10% is a lot, especially, and I don't have kids. Especially for those like Councilmember Constant, other than you have kids that you're raising now, those are, we don't know the

situation that all our employees are in and I think it's important to recognize that when we understand where the frustration and the pain comes from, sometimes from our employees. This is we're here by choice. We ran for office, we chose this type of service. They're doing -- this is their career and so I think that that's where we've got to continually keep that in mind. In terms of the recommendations for defined contribution, looking into this, you know I don't think this is the right way to do it. I think that again, these are things that need to be discussed, more collectively and collaboratively, at the end of the day, I don't think it about makes that much difference, based on whether they have a defined benefit or defined contribution plan, if they are I think they should look at other things to do in terms of long term stability. But in any case going forward if there are suggestions like this they be brought much sooner so that it can be discussed in a much more thorough way. I think this is mirroring in many ways the way we have been discussing retirement reform. I think we need to really be much more thoughtful about how we do these things rather than bringing them up just as we are about to vote on it just as the only option that's viable.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. I too agree with Councilmember Herrera and Chu and a number of my other colleagues. My concern with this proposal is, I mean I do think that we are limiting the talent pool that would want to get involved, and make the sacrifices they need to make to serve their city. Councilmember Kalra is correct. Nobody runs for office to get rich or to get some secured retirement for themselves. They do it because they have this civic duty that they feel that their community has called upon them to lead. And I think that limiting the -- limiting or making it less desirable to want to serve, because you know you're even making even larger sacrifices, is not helpful to our city. Especially as Councilmember Kalra mentioned. You know for someone with a family and for someone with a family that's a one-income family, this is - - you know, I mean Silicon Valley, area median income I think is 85 to \$90,000 for a family of four. And if you've got one single provider, you know, it hurts. And I think that we need to think this out even more. I'm not saying that we shouldn't consider improvements. But I'm also saying that, you know, the more we keep lowering the compensation for councilmembers, I just think that yeah, we are limiting this position, and these duties, to the independently wealthy. Those that are done with their first career, and you know they're either drawing on a

pension or whatever gains they've made in the stock market and you get a completely different perspective when you leave out a whole other demographic. And I'm talking about working class people. And so I can't support this motion.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you. My staff did a little bit of research on this and I believe that the return for the NAPTC 457, which I would assume is kind of like an IRA or some independent plan and/or what we have now is less than what Social Security would be. So I just had a question, and that is: How difficult is it to incorporate Social Security into the plan? Especially for those that may have in their work had that plan already, and they want to take advantage of the opportunity to continue that?

>> Dennis Hawkins: Thank you, Councilmember Pyle. The city does not participate in Social Security as an employer nor do the employees nor in Medicare.

>> Councilmember Pyle: Not as of now, why couldn't we, is there a restriction?

>> Dennis Hawkins: I think there's a larger question. If Alex wants to get --

>> City Attorney Doyle: I think we'll have to get back to you. If you want an answer.

>> Councilmember Pyle: I think that's one of the alternative plans Councilmember Kalra was talking about.

>> Alex Gurza: Absolutely, for a potential for new employees, city used to have employees in the Social Security system but as the City Clerk indicated it's been many years since we've had it but certainly it's something we could look into for the future.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Just on that subject, and to clarify Councilmember Rocha's questions, many questions ago. It seems as though this portion is actually being brought back to council, that is we're going to be looking at some options as to item 1.

>> City Attorney Doyle: Right now it's a 457 plan. The other option we know we're aware of is a 401 (a) plan and if there's anything else we'll have to work with staff to come back. Social Security would be one.

>> Councilmember Liccardo: Nobody is off and running yet?

>> City Attorney Doyle: No, you have an existing 457 plan in place, that's the PTC incentive, you're given the option, but we'll get back to you.

>> Councilmember Liccardo: Okay, great, thanks.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you, good question for councilmember Constant. Would you be willing to consider action on number 1 and 2 when we return to council just to get a little bit of staff analysis on the options maybe and just any kind of little background they can provide outside of what you've done which is pretty extensive but I'm always a little more comfortable when staff provides some feedback.

>> Councilmember Constant: First, well, thanks for the question because I know it's -- there's been a couple of comments that this kind of came out of nowhere. This is really 4 and 5 clarified from the recommendation from the salary-setting commission memo from May 6th. And nothing can be done until number 2 is done. Because without a determination letter, from Cal PERS, we don't even know what if anything we can do. So I think everything as the City Attorney said, everything will come back for definitive action. This is mostly a staff referral, expanding on specifically what the -- I was trying to give more clarification and more options than the two items, number 4 and

5, that the salary setting commission did and if you refer to that memo it's on the front page. That's exactly what they're saying. I just did the research behind it to give more breadth.

>> Councilmember Rocha: Yeah, I'm with you on all those and I think number 1 is a pretty significant policy decision which I'm supportive of, but again I'm interested in a little bit of staff analysis on what this means beyond the direction here. But again if you're not comfortable with that I understand.

>> Councilmember Constant: Just specifically what are you asking me to amend?

>> Councilmember Rocha: Just action number 3, bring action on number 1, 2 and 3 for council action when they bring that back for all of the items.

>> Councilmember Constant: So for staff, how long do you think, I know we got a lot of balls up in the air right now. I just want to make sure we have people deciding whether they're going to run for council or not and we're about a year, I think less than a year now, year from today potentially is the election.

>> Dennis Hawkins: Councilmember Constant and Councilmember Rocha, the -- we kind of view item number 2 on Councilmember Constant's memo as kind of the starting point. Because we need to get that additional information from Cal PERS and I think that was the spirit in which the commission made its recommendation to refer this to staff for further research. And then if I understand the motion correctly, we will be bringing back a range of options for the council at some future date. And I would think we would try and get this to the council in the fall of this year.

>> City Attorney Doyle: With the caveat that if we're seeking a determination letter from PERS, that's outside our control. We'll work on that to see if it's possible but it's really up to them to get us an answer.

>> Councilmember Rocha: Would you be comfortable with all of it returning for action on the time line they mentioned?

>> Councilmember Constant: I think I'm comfortable as long as it's all bundled together and we get definitive action. Like I said I really view my memo as being very consistent with what the salary setting commission said, just with more research.

>> Councilmember Rocha: I agree, thank you.

>> Mayor Reed: Okay, it's clear nothing's going to happen unless Cal PERS says we can do something. Anything else? Okay, I think that concludes debate on this. We have a motion which has been somewhat modified. On the motion, all in favor? Opposed, I see one two three opposed, Chu, Campos and Pyle opposed. So it passes on an 8-3. And we'll see it back in the fall. In some fashion here. Either -- if we can't hear from Cal PERS quickly then we'll get a status report in the fall. If we've heard from Cal PERS we may be able to take action in the fall. One more thing on that item, some of you may have noticed a memorandum, I did, regarding employee compensation and benefits, while the memo was out May 19th we didn't actually get it agendaized for today for some reason, and so we will get that on the council agenda, I don't know if it will be the 14th or the 21st. We'll have to figure out the details of that. Our next item would be then item 3.4, audit of key drivers of employee compensation. We have a presentation from our City Auditor.

>> Sharon Erickson: Good afternoon. This audit really was in answer to the question: What are the key components of employee pay. In answer to that question, my staff compiled ten years of employee compensation data reflecting actual transactions through the City's PeopleSoft payroll system. We included actual costs from the years 2000-2001 through 2009-10 including all payroll costs expended through the General Fund and all our other special funds. This exhibit, the first one I'm going to go through very brief presentation, shows you that in 2009-10, \$840 million in employee compensation was paid. This is broken down by department, and includes those departments that are largely funded outside the General Fund. I want to point out that the data included in PeopleSoft does not include workers compensation cost or a few other costs that aren't processed through PeopleSoft. The next graphic shows you that hourly benefit cost grew more than compensation over the ten year period. So employee compensation grew even though the number of employees has declined. Over the past

decade the fastest growing aspect of employee compensation was employee retirement and benefit -- and medical benefits, has more than doubled over the decade. Hourly cash compensation also grew as you can see from this chart, the rate was about 47%. I did want to point out that even though employee cash compensation increased, actual take home pay doesn't necessarily mirror this increase. So an employee contribution to retirement grew by 4 to 6% of pay during this time period and employee contributions to medical benefits also increased substantially. The next graphic shows you, of the \$840 million that was paid in 2009-10, base pay was nearly \$465 million. But only about 55% of total compensation. Previous audits by my office have focused on employee health benefits and pension costs. So this audit really focused on cash compensation, so as shown here it includes base pay, leave payouts, paid leave, premium pays, overtime, and other pays. The largest segment as I said was base pay. Now base pay increases occur in a couple of ways. One is general wage increase, the other one is automatic step increases. What we found is that neither one of those pay increases requires a performance evaluation. General wage increases are negotiated between the city and the employee units. Those increases have oftentimes exceeded CPI at least for the ten years we looked at. There's an exhibit in the report that shows those percentages. In addition about 64% of city classifications are eligible for automatic step increases based on longevity in position. For 2011-12 the budget office estimates automatic step increases will cost the city about \$2.6 million for all bargaining units. We arrived a small sample of step increases and found that 42% of those increases that we reviewed occurred without a performance evaluation, one step increase occurred even though employee had received a negative evaluation, and for two employees, they hadn't received a performance evaluation in ten years. So our first recommendation in the report was to require a current positive performance evaluation before implementing any pay increase, including step and general wage increases. This graphic then, through the rest of the report, chapter by chapter, we looked at the different other components of pay. This graphic shows you the city's overtime pay provisions which do add to the City's costs. However it should be noted that overtime has been a decreasing share of cash compensation. Police and Fire employees are of course the largest recipients of overtime. It's about 80% of the overtime is spent in Police and Fire. FLSA, the federal labor -- fair labor standards act does not require overtime payment to exempt employees who perform supervisory duties identified as about 1.2 million in our report of such pay. And the other things that FLSA does not require -- well let me say, FLSA requires overtime for hours worked. However, in all of the City's agreements with the various bargaining units, the city has agreed to pay employees overtime, based on hours paid, not hours

worked. And to show you what this means, I put up an example here on the overhead. Shows an actual employee's cash compensation although unusual, this is for a standard biweekly pay period. The employee in this example only worked 18 hours. The remaining 62 hours were paid time off. Either sick leave, vacation leave, holiday leave or comp time. Nonetheless, the employee earned an additional three hours of overtime pay at time and a half because of the hours paid provision. So the second recommendation in our report, and I believe you're familiar with all of this, you've seen this in proposals to bargaining units, to reduce the cost of overtime the city should look at the FLSA -- do an FLSA review and pursue reductions in overtime to align with federal requirements. The third graphic I want to show you is paid leaves. So paid leaves are a significant cost to the city. They cost nearly \$85 million in the last year we reviewed, 2009-10. I should have said at the beginning of this report that my staff and I are all beneficiaries of this system and are greatly appreciative of the generous leave package that you've provided to us, but our job is to tell you in a report like this what it costs, and leave is costly. It costs about \$1.9 million a day in cash compensation for a full time workforce. As I said, it's about \$85 million in 2009-10 alone. This does not include the payouts for unused leave and holiday in lieu premium pay. There is a lost productivity factor. Let me say that paid leaves range for city employees from 38 to 56 days per year based on employee group and longevity in position. The other public sector employers that we reviewed offer similar ranges. Except for paid holidays, where the city is more generous. Private sector employers on the other hand offer between 25 and 32 days per year. Our second -- our third recommendation I'm sorry is that the city offer eligible time off when we are calculating total compensation so we be sure to give a value to that time off and that we consider aligning paid leaves particularly holidays with comparable employers. The next graphic, you're familiar with something similar to this. This shows you sick leave payouts. Sick leave payouts have quadrupled over the last decade. Again these numbers are based on the numbers coming straight out of PeopleSoft the City's payroll system. Over the last ten years it's quadrupled in 2001 -- 2000 to 2001 the city paid about 60 million -- since 2000-2001 over the past decade the city has paid about \$60 million in sick leave payouts. We estimate the city's liability for employees that are within a year of retirement-eligible, to be more than \$20 million. The provisions that San José has are more generous than those offered by other employers. Our fourth recommendation is to reduce costs the city should consider eliminating or reducing the sick leave payouts. The next graphic shows you the impact of premium pays. Our conclusion was that premium pays really do impair transparency and have triggered additional cost. Now let me say premium pays hit a high of \$40 million in 2008-

9. You see a drop in the last year. About -- premium pays are about 4% of citywide cash compensation but they're about 12% of fire and about 7% of police. The reduction in the last year is due primarily to the police reduction in premium pay, which was a result of rolling-in, the way we call it holiday in lieu and antiterrorist pay. We found in the course of our review that some premiums compensate for minimum job requirements. Examples include EMT pay for fire-sworn employees, AB license pay for some employees who operate heavy duty vehicles. We fully support my office does rolling premium pay into base pay. It improves transparency. But at the same time rolling premium pay into base pay can have a price unless it's discounted to be cost-neutral. In a hypothetical scenario in our report a police officer's annual compensation actually increased by 2% as a result of roll-ins of anti-terrorist and holiday in lieu premium pays. The fifth and sixth recommendations in our report is to continue to seek to eliminate obsolete premium pays but to disclose in all the direct and indirect costs associated with rolling in premium pays and consider discounting the value of the premium pay to maintain cost neutrality if that is your wish as you move forward. And even if we are not able to roll all of those pays in we do believe that the city should standardize its definition of total compensation to include all of those eligible pays. When we tried to benchmark San José payroll to other pay plans it's very difficult to compare across jurisdictions unless you've included all those different factors. One local city has done that. City of Santa Clara. Has it posted on their Website. It's really valuable. It's not something we may be able to do in the short term, but long term, disclosing those elements is very important. The audit report in full is on our Website, of course. The administration has reviewed the information in our report and is in general agreement with the seven recommendations in the report. In fact many of those items are subject to meet and confer and are before you now. I'm happy to answer any questions.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. I asked all my questions at the Public Safety committee. I just wanted to say thanks again for a great report. These reports are really informative and they really helicopter illustrate the unintended consequences as you go forward. I appreciate all the work and I would like to make a motion to approve.

>> Mayor Reed: We have a motion to approve. I have a few more questions from councilmembers. I'd like to ask a question about the pie chart which is about the third slide you put up. That one. I keep pondering this pie chart and wondering what happens when that slice of the pie called benefits continues to grow. And this is 9-10. So I know in 10-11 the cost for retirement benefits went up 50 million, 60 million, I've forting exactly how much the increase was. But if the pie isn't getting any bigger because of revenues going down, or if just revenues are slowly growing and benefits continue to grow, that base payroll, the base-pay pie has got to shrink. I mean, it has to go somewhere. And now in '9-10 that's the pie, in '10-11 the pie is worse, and in '11-12 budget we're about to deal with, that benefit number has gone up again. So what does the pie look like -- have you done projections to see what the pie looks like this coming year, give or take the 9-10 version and now look at the 11-12 version, you're not doing projections here, I understand that. This is 9-10 data. Do we have the data for 10-11 and how long will it take to get the data for 11-12?

>> Sharon Erickson: Yeah, let me tell you, the trend is not pretty. So ten years ago, the pie was more like 60-plus percent was base pay. So base pay is falling as a percent of total compensation. And as you say, we don't have -- we haven't done the projections going forward. But we are quite certain that its base pay will be less than half of total compensation very shortly, if not soon.

>> Mayor Reed: Like in three weeks.

>> Sharon Erickson: It's just kind of a staggering, it is a staggering prospect to think about. That's why I feel so strongly about the need to be transparent with total compensation. So if employees are taking a larger and larger share of compensation in the form of benefits either retirements or medical or in terms of paid leave, that we have a conversation about how that pie should look going forward. And it really does depend -- the pie is also -- it's not growing any way. So it hasn't -- it's not going to shrink over the next couple of years but such a large portion of it could be in that upper quadrant for benefits.

>> Mayor Reed: Well, we love to make the pie bigger. Unfortunately, I think Jennifer's projecting maybe 3% growth in the size of the pie. And that benefit section is growing much, much more per year than the 3%. And then

of the other categories, other pay, leave payouts over time, premiums and paid leave. Jennifer Maguire sometimes has a pie chart that shows the discretionary spending in places where you could make the differences. How much of the other categories are in the nondiscretionary category, or maybe that's not how you analyze them.

>> Sharon Erickson: Well, some of -- some of each of those slices, so for example, leave payouts, we are, under our current agreements we're required to make those leave payouts. Now if those agreements change then that could change. You are required to pay off vacation at the end of employment for example. So that can't be changed. Overtime you are required to pay overtime when you ask somebody to work overtime. However, we do have some provisions in our overtime -- in our MOAs with regards overtime that we are recommending be changed. Otherwise, you know paid leaves is something that you establish as a council in coordination with the bargaining units. So many of those are required in the sense of, if you have agreed to paid leave, I mean, some people would count something like paid leave as part of base pay. We called it out separately because it -- for transparency.

>> Mayor Reed: Thank you. Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. Can you expand a little bit on the recommendation number 7? You touched on it briefly but if you wouldn't mind helping me get a sense of the why of this. You use the word transparency. But you also mention that comparing us to other cities was difficult yet you only mentioned one that's doing it that way. Or maybe I misunderstood how you presented that.

>> Sharon Erickson: Yeah, if you look on page 50, I don't know if you have the report, page 54, the report, each jurisdiction that we talked to actually had a slightly different definition of total compensation. So what we're concerned about is, if we're trying to benchmark ourselves to other jurisdictions that is extraordinarily difficult to do. So not every jurisdiction will attach for example -- so if we have an extra holiday above and beyond what everybody else has, we have an extra day of leave, what we're saying is, we need to monetize that, give a value to that, make sure that's in our total compensation. And then when we're comparing it to other jurisdictions we

should do the same thing. So that was our recommendation just to be as transparent as we can. But we were delighted when we saw Santa Clara's Website, so the City of Santa Clara you can go to any position and it gives you the full cost or the full total compensation for that position. That's not something I can recommend to our HR department that they do over the next year. It's a large project to calculate the total compensation for each position. Given the cuts they were taking, we didn't feel we could do that. But we are saying in the interest of transparency that's the direction we need to move, we need to understand what the total compensation is so we can compare to others, does that --

>> Councilmember Rocha: It does but if the other ones aren't measuring it that way either then I'm still not following --

>> Sharon Erickson: Well at least we'll know what our piece is. And then we'll know what questions to ask. So as my staff got more familiar with the pieces of our compensation package, we knew better how to see these differences with other people. So when we first started the audit, one of the first things I said is let's just benchmark our pay and make sure that pay is comparable as we're looking at all these other components. And we found out very quickly that that's extraordinarily difficult to do just from the first few conversations we had. Because different people have different sick leave provisions, some of them have time off, instead of sick leave and vacation, and how do you monetize that?

>> Councilmember Rocha: Okay and you touched on one of my next question, which is workload issue for HR and have they given you feedback on this item in terms of this direction and where that fits in the priority of their workload right now?

>> Sharon Erickson: Well, the city administration has responded favorably to this. I think we all agree these are numbers we need to understand and know. We fully support rolling in base pay -- rolling premium pace for example into base pay. Some of that would help simplify all of this. And I've said in previous audits we have 232 pay codes out there. So figuring your total compensation when you have that many different variables is very complex. So I think it is a longer term process. But I do believe we are working along the same direction.

>> Councilmember Rocha: So the recommendation 1 and so I understand number 3 and that one is the appraisal, employee performance evaluation. Is there reason you're using a different word here? Is that -- am I reading it correctly?

>> Sharon Erickson: Yes.

>> Councilmember Rocha: Call it performance appraisal, performance evaluation, same thing?

>> Sharon Erickson: Yes.

>> Councilmember Rocha: I couldn't agree on this one more, as I think a lot of people know, I think it's really critical. For me I'd rather see that listed number one, because you can't do number one and number 2 in my mind. That's me being nitpicky so thank you for this report.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you. In regards to recommendation 7 in the transparency aspect, I mean obviously as a government agency we have different application and I think San José specifically has made many statements as to the importance of being transparent. Now, that's in contrast of course to private sector where that kind of information is kept confidential for whatever reason, competitive reasons, otherwise compensation, that information is kept traditionally confidential, is that right, as far as you know?

>> Sharon Erickson: That's my understanding.

>> Councilmember Kalra: And so I'm -- and so what about those that we contract with? To do the government's work? Even if it's just a matter of those -- of the details of the contract, in which they have -- in which they're doing work for us, not opening up their entire books? Sometimes we hear that, hear oh well, we can't open up our books

because we have competitors, contractors, whatever, we do software, we don't want to reveal trade secrets whatever it may be but what about the importance, the similar importance of us being transparent in terms of spending the public's money in terms of contracts? Do you think that's equally important to clean up allow we compensate our public employees?

>> Sharon Erickson: We have not audited the city's prevailing wage or living wage requirements. But I believe that's the forum in which we would find out what our contractors are paying.

>> Councilmember Kalra: And that information has to be provided to the city but not necessarily made public, I don't know Rick --

>> City Attorney Doyle: It is all public record. To the extent you are paying consultants or you're paying contractors, all that is a public record. And in fact there is compliance through equality assurance in Public Works --

>> Councilmember Kalra: But beyond just whether they're paying prevailing wage, but the same level of specificity that this has suggested for how we compensate our employees, you know --

>> City Attorney Doyle: I think that really gets down to what the contract would say. In some cases such as to the extent we use outside counsel we require hourly rates and if they are listing you know copying expenses and all the breakdown, I'm not sure if all consultants are treated the same, or flat rate or they break it down to hourly rate or something like that. But the bottom line is the amounts that are required to be made public are public records.

>> Councilmember Kalra: And I think that, and I didn't bring it up in regards to the prevailing wage aspect, it's more in regards to the waste aspect, making sure that we're getting what we pay for and it's being done in mean in which we expect. And obviously when you contract with law firms and lawyers you never know what they're charging you for. It can get up there counsel fees.

>> City Attorney Doyle: I want to make that clear we break it down to paralegals and everything else.

>> Councilmember Kalra: Yeah, and I think that has become more of a practice for law firms over the past few years because that was the criticism for many years, you really didn't know how they were getting to be enormous sums. That also just that in discussion alone, it kind of indicates that we aren't the private sector, we aren't the private sector in many ways, in terms of transparency. And one of them is we should look at modeling the private sector, especially since their mission is to make as much money as possible and that's not our mission. Now on the efficiency side, that's where we can certainly gain, in terms of making sure as we do serve our residents we can be as efficient as possible and thereby, save money. And save the taxpayer money. You know. But it's a different, you can't approach things strictly from what's the private sector doing? Because the private sector does a lot of screwed up things too. So we want to make sure we do things the best we possibly can with the appropriate analysis. In looking at and I think you touched on the sick leave payout. There are some legal issues we have to consider, but you are making the general statement that it may be in terms of the current policy that we have you feel that that's one area of compensation that's kinds of grown a lot in the recent years in terms of how much we pay out?

>> Sharon Erickson: Oh, it's absolutely grown, yes.

>> Councilmember Kalra: The numbers being used go to '09-10, so they don't take into account the 10-11 give backs or the pending give backs from 11-12 especially in terms of base pay.

>> Sharon Erickson: Correct. So that the graphic on page 24 of the report shows the general wage increases over the last decade and they do show some of the reductions. In 2010-11, so they do show some of those but I want to caution, there's a footnote on that table that states that some of the bargaining units didn't take pay reductions, so we're not seeing the reduction here. They took an increased retirement contribution instead so those numbers aren't reflected and you're absolutely correct the numbers going forward into 11-12 are not included in this table.

>> Councilmember Kalra: Some of the graphs went to 9-10 and didn't include 10-11 either.

>> Sharon Erickson: Right, we are looking at full year's data out of the payroll system. If I could interject, the payroll system now gives us a picture into compensation. So it is one of those places where we do have a computer system that really can -- we can dump out of that system the payday and parse it in different ways. Now, on a go-forward basis as we learn how to use that kind of data we'll be able to do better analysis of the different components of pay, how different pay codes are working and so on and so forth. But it really is a delight to my staff to be able to dump that forecast out of a pay system and actually look at total compensation that was actually paid.

>> Councilmember Kalra: And we don't have the comparable or do we? I don't believe I saw it in your comparable rate of increase, just in terms of base pay and wages in the private sector at the same time? I believe there's been an increase but I don't know the number.

>> Sharon Erickson: No.

>> Councilmember Kalra: The last area I wanted to discuss and the one frankly I had a major issue, I think we discussed that briefly when we had a chance to speak in regards to this report, has to do with the recommendation regarding the merit based pay system. On the surface, I don't think anyone will disagree that of course you want to have some way in which you're evaluating your employees. Working at the county, last few years I was there, our boss put forward a performance evaluation, I thought was very helpful not only for me but also for my supervisors. But it did not in any way -- wasn't connected to the step increases and all that. But it was still very helpful especially to create a records of how someone was performing and how they can improve and where they can improve. I'm sure this is some independent value in that, no matter what. In looking at page 25-26 we discussed this, the indication that all government employers you looked up similar model as City of San José, however all the private private entities surveyed reported that all raises and bonuses are tied to performance appraisals. Further that employees of those private entities do not get pay increases without being treated to

performance appraisals and any resulting pay increases are tied to those appraisals. Now, the recommendation which indicates requiring the current positive performance report before presenting any pay increase as well as the consideration of elimination of automatic step increase process, which is a clear departure where other federal government agencies are. And cleared up parts from where the government agencies are to the private sector. My concern is that there's an assumption wide it being stated and without any evaluation of the cons, there seems to be an evaluation that somehow the private sector does it right by doing it this way as opposed to there needs to be some balance. And the reason why I bring that up is, if you look at the private sector you'll see over the years, a historic and continual lack of representation of women and people of color as you go up the ranks in the private sector. Now, if you believe that women and people of color just happen to not be as talented, that's one thing. I don't believe that to be the case. So therefore that assumption that merit based pay somehow produces an equitable result is just flat out not true. And so -- [applause]

>> Councilmember Kalra: I cannot support a recommendation requiring a current positive performance appraisal since we don't have that system set up yet. We don't have a system that -- we don't as you indicated in your report, there really isn't a system set up certainly not in all departments. Some departments have some form of that kind of appraisal. We have no idea what the appraisal would look like, we have no checks and balances on the appraisal system so that if there were any kind of favoritism, how that's combated. I don't think the private sector does a very good job in combating that. We don't have anything put in place or any discussion of what happens in the private sector since we're comparing the private sector when someone tries to stand up and organize for collective bargaining right or there's retaliation or punishment going down the legal road, we don't even want to go there, there are a lot of relife impacts of having a strictly merit based system, that hasn't been considered or discussed here at all. And I think that's where I found some area where it lacks, there's pros in terms of money savings, there's pros in terms of how the private sector does it without discussing what the drawbacks are. There are real drawbacks that we all have to be concerned with and proceed very cautiously going forward rather than just assuming that well the private sector does it that way so that's the right way to do it. Thank you.

>> Sharon Erickson: If I could comment briefly.

>> Councilmember Kalra: Sure.

>> Sharon Erickson: General wage increases and automatic step increases didn't help me break any glass ceiling. They just get you to the top step in your classification.

>> Councilmember Kalra: I agree. I'm not saying that it's easy in the public sector in women or for people to go there, dot get me wrong. I think we can find systemic discrimination in public and private sectors. I think allowing for some type of subjective as well as objective standard in terms of individuals having some kind of employment rights, in terms of individuals having the ability to move up or to have different types of opportunities, so that their opportunities aren't closed off are critically important. And so I think that -- so yeah I certainly don't mean to imply that any -- that folks in the public sector rise up, don't have similar struggles or obstacles because that's definitely the case and can you probably see that in demographics in the public sector as well. Many not as pronounced in the private sector. I think that needs to be part of the conversation, how the private sector combated it. How some sectors have been good at that some haven't been. How the private sector has combated that. That needs to be discussed as completely a wholesale change in how we do business here, that needs to be part of that discussion.

>> Mayor Reed: City Manager.

>> City Manager Figone: Maybe I can just add one more fact to the mix as we move forward. And that is, just to remind everyone we do have about a thousand employees who are not on automatic step increases because they're part of management whether it's organized management or not and the management pay for performance system. I just wanted to put that out there also. As we move forward I do think we have some existing examples that we can draw from.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. I think if you also look at San José, if we were one of, you know, the medium sized corporations in Silicon Valley and you look at the makeup of our leadership, we'd be one of the most diverse leaderships in the valley. And that is because there are safeguards that promote diversity, and it allows for women, people of color to be able to climb the ranks. And I agree with Councilmember Kalra that you don't see that, in industry. You just don't. And it's something that you know, we as a country have been trying to fight and promote for decades, it's sad to say over the last 20 years we're going backwards. I mean, I think that's also a testament of you know, the corporate structure, you know, dogged a dog. I have a question. How does somebody go ten years without getting evaluated? And maybe that's not for you to answer. Maybe it's someone from HR.

>> City Manager Figone: I can answer it. I think it's inexcusable. This performance appraisal system review and improvement is the top priority for me, and for Alex in his new role moving forward. And it is not acceptable, councilmember.

>> Councilmember Campos: And so with that, how -- was that case part of the 25 that was evaluated? That was pulled out of the sample?

>> Sharon Erickson: Yes, yes.

>> Councilmember Campos: So how many more cases like this do we think could be out there? Is this an anomaly?

>> Sharon Erickson: We don't know. We ran across two employees. We -- we don't know how pervasive it is.

>> Councilmember Campos: Okay.

>> Sharon Erickson: We do know some departments appear to be very good, similar to what the City Manager has said. Not every department is down on the job on this or not every employee has gone ten years without a

performance evaluation. So please, don't misunderstand me on that. We have exemplary departments where every performance evaluation we pulled is in the file. So you know we do have good examples in the city and we need to get consistent with that. I do agree with the comments in some ways the performance appraisal has to come first. I just couldn't think of a better way to make it happen than make somebody's pay increase depend on it. I figured this was the quickest fastest way to get these performance appraisals done quite honestly. That's the one trigger we can pull. We could discipline people for not doing performance evaluations. We can write up supervisors but if you made everybody's pay contingent on having an evaluation, it would happen.

>> Councilmember Campos: So I guess my next comment is, you know, I mean, I think, I mean people want to be evaluated. Because it's natural. It's human to want to know, am I doing a good job? Am I -- do I have full grasp of what I am doing, am I growing? I think everybody wants that. I don't think we're saying that we don't want to see that happen. I think what our concern is, or my concern is, that there are -- there are 2 too many opportunities where biases can and will occur, just because -- and you see that. You've seen that since the inception of our country. Like I said, you know, I mean, I think that we need to be able to set a full proof system so that biases can't occur. As we move forward, if that's what compensation's going to be based on. Because it's not, then you know, in a system of, you know, 5,000 employees, you know, even if it's one person that is being singled out, under the radar, because we're such a large organization that it can happen, it's still -- it's still inexcusable. And so you know, moving forward, I really want to see a system that is going to be able to show that people can't be taken advantage of.

>> Sharon Erickson: Well, and let me also respond. Every one of us in this organization is supposed to be evaluated by somebody. I'm evaluated by you, you by the voters. Every employee in this organization is supposed to be evaluated. And sometimes I think my middle name is Pollyanna but we should expect exemplary performance from every employee and that includes the supervisor. So if there's a supervisor who it isn't felt is being fair to those employees, that should be in that supervisor's evaluation. Evaluations are going up and down the whole tree of employees here. And we shouldn't tolerate bad performance, whether it's from a supervisor or a front line employee. That's why -- and I believe that we have exemplary employees in this city. I don't think that doing a performance based, merit based system, would hurt the vast majority of our employees.

>> Councilmember Campos: But I guess what I'm -- and I just lost my train of thought. So I'll go on to my next comment and that is, you know, we can't -- we can't compare ourselves -- there's many ways that we can compare ourselves to industry but we can't solely compare ourselves to industry because there are many things that attract people to industry. And it's that -- especially in Silicon Valley it's that Vegas mentality. It's I'm going to hook up with a startup, I'm going to get stock options, bonuses, catered food at my company, child care, a gym. People don't come to government expecting that, they just don't. And people don't stay in government because it's a passion. People jump around in industry. They do. And I think to compare ourselves with industry, you know we're selling ourselves short. And I think that one of the ways that we can show -- or attract people, good and talented people, to government is to try the best that we can to be consistent and to be fair. And I think that's what people are look for when they come work for governments. And I can't remember what my next question was going to be so if it comes back I'll put my light on. But that's it for now. Thank you and thank you for the report. I know you put a lot of work into it.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor. Sharon in your group's work, when they were reviewing this question of pay by merit, you obviously asked questions of other people and they shared your views. Can you tell me what some of those folks said?

>> Sharon Erickson: Well, what is was most interesting to us was people in the private sector couldn't even figure out how we did pay increases without a performance evaluation. So they couldn't conceive of it because for them it's just a different mindset. For them the trigger, they couldn't believe we would allow a computer system to give blanket across the board increases. The trigger for all of them was a piece of paper that was a performance evaluation signed by the employee and the supervisor.

>> Councilmember Oliverio: Thank you. And I'm hearing a variety of comments up here and I just want to say that I've never seen a -- granted I've only been on this planet for 41 years but the companies I worked for were

incredibly diverse. Incredibly diverse people from India China Iran everywhere around the globe and what's unique about tech and maybe not mining or commercial real estate is that it really is recruiting, incredibly diverse universe of people that are really judged based on what skill set they bring. And I've actually been at companies where the top performers weren't white male. They weren't male. Weren't white. They were women, and people of other nationalities. And I -- I would just you know what, when you are saying I think you're characteristicking a little too broadly and I would say there's incredible diversity. Go to any of the companies here and walk through. It's not -- it's not leave it to beaver. It is an incredibly diverse workforce in this valley and I think more so in other cities et cetera. And you know the gambling mentality startups maybe it is nine out of ten fail. You know have fun working with a startup company that if they bring in food it's because you're working until midnight. When you fail, you fail. I've gotten stock options twice in my life, three times, worth zero, not a penny. So I think for every Google that's out there it doesn't employ every resident in this city or country and I think it's imperative that acknowledging the good work of the auditor's office I hope you continue to make through even with the budget cuts to produce the excellent work and really appreciate it. And just want to say that thank you.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. I think you know clearly Sharon, you seem to agree with the notion that we shouldn't be doing merit based pay if we're not doing performance evaluations.

>> Sharon Erickson: Correct.

>> Councilmember Liccardo: Okay, so I think we are all in agreement with that. I think the answer is not to eliminate merit-based pay but in fact to do the performance evaluations, is that right?

>> Sharon Erickson: I agree.

>> Councilmember Liccardo: You know, I think that -- you know, Councilmember Campos obviously raises very valid concerns about issues related to bias and prejudice, and there's not question that we need to be very vigilant

in this city about bias and prejudice. I recall being in a room when we voted to eliminate a council appointee because of bias and prejudice or to fire a council appointee. I don't believe the standard can be a foolproof standard, that doesn't exist on this planet and frankly if we're going to eliminate evaluations and merit based pay because we can't come up with a foolproof merit system which probably eliminates the voting booth as well. I just think we're humans and we recognize this is around us and we have to be vigilant around doing what we can to counter it. I think we need to have a realistic standard about how it is we can implement evaluations. I look forward to us moving forward with that, Alex moving into his new position, are I'm sure that will be a top priority as soon as he actually gets some sleep. I know that hasn't been something he's able to do in the last couple of weeks. I had a question about rolling the premium pays into base salary. And forgive me if this was answered in the document. But does that affect our pension retirement costs?

>> Sharon Erickson: Yes. So it can also, depending on the pay, it can affect retirement cost. For example, postpay, though, is already pensionable. Most of the other premium pays are not. So any of those could have an effect on retirement cost.

>> Councilmember Liccardo: I see, okay. And I recognize obviously these various numbers are moving around quite a bit, particularly in very painful times that we have now with concessionary bargaining. But I certainly support the general movement of trying to get all these numbers into a single -- into a single salary figure. I think not only for transparency but also frankly for recruiting. I understand we're not doing any hiring now or in the near future but I'd like to believe there will be a day soon when we'll be able to hire again and actually expand our workforce and I think it's really important. I know Santa Clara I know rolls their numbers in and everybody oohs and ahs, partly because Santa Clara pays well and those numbers are relatively inflated compared to the apples and oranges of other cities. The other issues, rolling sick leave and vacation leave together seems to be the approach that Fremont and San Diego used. And I'm wondering if, you know as we talk about either eliminating or restricting sick pay, do -- can we tell anything from those cities or other cities that have sort of merged them together about how that affects the use of those hours and whether or not people end up retiring with large amounts of payouts at the end?

>> Alex Gurza: Yes, Councilmember Liccardo,.

>> Alex Gurza: . Anecdotally only, an issue that has been raised before, rather than having separate buckets of vacation pay and sick leave whether you have a personal time off bank of leave program. Whatever the city has to consider if you have it all as one then 100% of it must be paid out so that's one issue. Is that you're increasing the amount that has to be paid out right now. Even our sick leave can be paid out only on certain circumstances. Number one. Number 2 some places that have gone to that kind of program have seen an increase of what we call the unplanned absences. So now the vacation is usually preplanned, preapproved. When it's all one bucket, they've experienced an increase in the number of unplanned sort of illness-related issues. So we just have to analyze that issue to be the actual, what would the impact be the impact of combining all our leave packages into one.

>> Councilmember Liccardo: I'm sorry, one other question I'm trying to read my own scribble. Oh yes, in terms of the recognizing all the pays within single number of salary exception, to what extent do we already do this every time we're bargaining?

>> Alex Gurza: Councilmember Liccardo, it varies a little bit in the negotiations. Clearly, in the last several years we've been primarily concerned with our own situation in doing some sessions. But when we've done surveys we've tried them in a variety of ways. We've talked a lot about this with the City Auditor. There is tremendous complexity in salary surveys in comparing one to the other and how to get to apples to apples. Although we -- I think we've made tremendous strides in terms of what we make available on our Website. In fact counterparts of myself in other cities even in Southern California have contacted me and one of them said that they looked up to us, both literally and figuratively in the amount of information that we put on our Website. Having said that, for example, this person in Southern California and I discussed the complexities, for example they're self-insured on health care. So what do you plug in for an employee on health care when they're self-insured versus we have Kaiser? So it's just a tremendous amount of complexity. That doesn't mean that we can't don't improve the amount of compensation. But that apples to apples comparison, even when you add premium pays, makes it more difficult. There's usually little dispute when you compare base pay to base pay. But then when I talk about

when you get to the right you have base pay, you have premium pay, you have health insurance, retirement, the further you get out that way, the more disagreements you may have where are you really comparing apples to apples.

>> Councilmember Liccardo: Thanks.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. Thank you, Sharon, for another wonderful job. I just want to make a comment on the recommendation 1. Not that I oppose the merit based system. But I want to caution that the merit is bayed system, culture change, not a profit or procedure change that we can implement it very quickly. Speaking from my experience working in the private sector, we have a very, very waterproof performance system. You know we do a 360 District 3 review we use that to base our pay increases. The better review was to make sure we had a waterproof performance review system before we start implementing this merit based pay. It looks pretty good we look at if private sector, we are watching a magic show, it looks really, really good, but kids, don't do this at home. It takes a lot of practice before you will be able to achieve that goal. Now we're talking about asking those supervisors that haven't given their employees a performance review in ten years, to give them the authority to judge their employees' performance, and base their pay on that judgment is dangerous. I think the merit base is good, but we should start it at top. We make sure that all of our supervisors and managers, they kind of come out of a merit based system. They understand the system, they have experience in a more rigorous performance review, before they just go out and okay, I'm going to do your performance today, and then you know, that will, will not be fair to the employee.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: I already spoke. It must not have gone off.

>> Mayor Reed: Okay. Councilmember Herrera.

>> Councilmember Herrera: Thank you Sharon for a very, very valuable report to us. I'm wondering in terms of the pie chart, one of the comments in the first paragraph in 2000-2001 employers bearing an ever increasing portion of the cost. I'm wondering as these costs increase relative to the pie and we are seeing things have to shift, what kind of impact is that good to have on employees take home pay, if their contributions are increasing? And how do we give visibility to employees? So they see how are we educating them as to what's happening this phenomenon?

>> Sharon Erickson: You know my staff and I have worried some about that. And that's one of the reasons while I'll make another plug for an annual report from the pension system to employees, I'm talking a very simple report that shows to them their contribution rates where the money went where it came from, so on. But I think we could do a better job with employees clarifying what those rates are. So one of the things is for many of the paychecks that my employees reviewed, the paycheck can vary dramatically every biweekly period. I'm salaried so my paycheck stays level. But for other people they are getting a different amount of pay every biweekly period. So it wasn't clear to us that for example the police department employee that we looked at would have noticed they got a 2% pay increase when we rolled in a couple of premium pays. I'm also worried that people may or may not notice some of these retirement pension benefit changes as they're rolling through as much as they should. It's one of those things where I think we just need to be very transparent. So on average, some employees went up 4 to 6% of pay over the ten year period that we looked at. Employees contribution for Kaiser family went up from \$400 a month to \$2200 a month over that ten-year period. So employees are seeing a gradual erosion in kind of the base pay piece of this. And I'm very concerned that we make that transparent to people because base pay is the recruiting fool to people.

>> Councilmember Herrera: I am concerned too and that should be one of the drivers to looking at pension reform is how it impacts compensation for our employees. I think it's very important that employees whatever bargaining unit they're in can see how that impacts their pay. I know for some it's more than others but I think it's really important to make that transparent. In terms of the merit based and I've been in both the private sector and the public sector and I've given reviews to my own employees who work for me. I've used the system that the city

has here and I've found it's pretty easy to use. My blows would like feedback and they had an opportunity to rate themselves. I found it to be a very fine workable process. I think it's very unfair not to let people know what you expect of them and to give them a chance to both evaluate themselves and have their supervisors evaluate them. I think we're not doing a service to our employees if we're not performing that evaluation because it also gives them a chance to look ahead in terms of planning their growth in the career here, or where they plan to be, it's really important, we need to make sure that happens. I think government is very different than the private sector, I agree with the comments that people are making that it's very different. But I think in terms of this report that you provided I mean I'm assuming the base of this, the reason we're looking at all of this is because payroll and this compensation is the biggest part of our budget so we have to look at it. In terms of looking at basing you know, increases in pay on performance, I think these kinds of -- this can motivate continuous improvement. It can motivate innovation. It can motivate cultural change so we're more results oriented. I think these kinds of things -- and they are done in the private sector, I think those are things that we should aim for too. I think again that helps our employees. I think we need to know that what we're doing actually makes a difference, we are improving our organization, getting things done in a better way and just because we're in the public sector doesn't mean we can't create a culture of innovation here and I hope that's the direction we are moving in when we talk about having these evaluations and looking at merit based. It's not to be a negative thing it's to have us strive for something better and -- strive for something better and to have a continuously improving organization trying to achieve things. And since we have a shrinking -- we have some challenges we are facing, we actually need to do that even more now. Do you have any comments on that?

>> Sharon Erickson: I absolutely agree. That's why I call myself a PollyAnna. I do believe we have high-performing employees around this city. We need to reward those employees that are performing. There's no reason to tolerate anything different than that.

>> Councilmember Herrera: I don't think you're Pollyanna at all, but thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Just on a couple of questions that were raised. You know when we talk about and the few people have made response to the comments that I made and Councilmember Campos made regarding the private sector, that look, you know we sometimes get skewed in thinking first of all the technology sector or startups equal the private sector. They are part of it, but not all of it but that being said not speaking anecdotally because I've probably visited 100 of those employees, the data shows that women are far less represented in technology companies as a whole, certainly as you higher up the ranks, certainly these are things that companies acknowledge in terms of the data. Yes, there are a lot of people from India and China and all that there. There are very few Latinos and African Americans, which is a huge issue in the private sector, and not all of it is because they are not available, or there is a lack of talent. Again, there are -- it is very challenging and very difficult to monitor the progress in many of those areas. And when we look at -- and so when we look at our own -- the way in which we do performance evaluations, and yes, I mean we certainly become more results oriented although I don't think that should be an assumption that we're any way less results oriented with our staff. We looked at the workers comp adjustors, they do two or three times the workload of the private sector for a lot less pay. So we do have staff that work extraordinarily hard. The problem I have, and I agree with Councilmember Liccardo, indicating that you can't build a foolproof system. Of course you can't. No one is saying you can. I think you have to have a system in place first before you start judging pay on it. We don't have a pay on it first, there hasn't been a track record of several years which ordinarily would take me -- we could streamline it and do it much more quickly but we don't have supervisors that are accustomed to basing pay -- to evaluating, and even if they are, they're not accustomed to evaluating and having pay depend on it. Those are two totally different things. Once that starts occurring you will see that it's going to be much more challenging and we'll see again as Councilmember Chu indicated it is a culture change. It is not so simple as just implementing a policy and then you're going to have people's pay depend on it and you're going to have -- you're going to have inevitably strife within departments among supervisors and those they supervise as I think we can avoid all of that if we take our time and do it properly, implement a system of appraisal first, performance first, before you start attaching pay to it. Because that instantly will cause angst from the moment those evaluations begin. As opposed to training our supervisors how to do performances and using that as a package of how to improve service delivery not strictly being used to determine pay.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you. I agree with that concern. And I'm hoping that whatever we do in this very fine fine report that you put together is to phase in whatever recommendations that are made. And that phase in could take as much as a year. I have no idea what you had in mind.

>> Alex Gurza: Councilmember Pyle, clearly the issue is the fact that we need to get better on having employees review annual performance appraisal is one of the top priorities. And as the City Manager indicated I already had an opportunity to meet with the managers in our human resources department and in fact our entire staff about this as a priority. I think it is important to remember as the City Manager indicated we almost have a thousand employees that are used to evaluating employees and pay is dependent on it. Unfortunately we haven't been able to provide merit based increases in the last couple of years. But that group of employees, the percentage receiving the evaluations to the City Auditor's point is much, much higher, because they know that they couldn't even recommend a merit based increase unless it came with a performance appraisal approximately. But the purpose to the performance appraisal to Councilmember Kalra's point is much, much broader than simply that. So what we simply -- what we recognize that we need to do first is to raise that percentage of employees getting their performance appraisals to 100% or as very close thereto as we can make it. And that is going to be our priority in doing that. Now to Councilmember Liccardo's point and I think Councilmember Kalra agreed, developing a perfect system when human beings evaluate other human beings, if it's not counting widgets, comes with it some difficulties in those issues. So I don't think we're going to strife for perfection. There are going to be times when employees don't agree with their supervisors or supervisors who aren't very good with appraisals. Training is a large aspect of that. It is a long term project, and realize there's no way we can have pay based on merit when you haven't provided that appraisal. And so that will be our priority. We'll be working on starting immediately.

>> Councilmember Pyle: Thank you. And Sharon do you have any idea how many -- what percentage of people that are not getting -- given some kind of a recommendation or given an evaluation, would be?

>> Sharon Erickson: So our --

>> Councilmember Pyle: I might have missed that.

>> Sharon Erickson: Our figures come from a sample but I believe Councilmember Rocha is citing a number from the budget document which said it was about 67%.

>> Councilmember Pyle: Wow. So it's a lot of work isn't it?

>> Sharon Erickson: Yeah, so there is a lot of work to do. And by accepting an audit recommendation, let me say nothing changes as a result of you accepting an audit recommendation. Much as I would like to wave my magic wand. So this is a very -- if I could you know confirm what Alex was saying. This is a very long term project. And almost all of these issues are probably subject to meet and confer and would need to be discussed with bargain units as well.

>> Councilmember Pyle: As always, I enjoy reading your reports. I always learn volumes so thank you for all your good work.

>> Mayor Reed: Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. I just heard that Alex mentioned that the first priority is to get all other employees a performance review. And would I like to add I think to me the first priority is to have designed a performance review system that you know, it doesn't have to be perfect. It doesn't have to be foolproof. But there is a lot of good examples, we like to cite the private sectors. There's a lot of good examples in the private sector. We don't have to reinvent the wheel and I'm not look for a foolproof system. But a better than what we have today would be very much appreciated.

>> Alex Gurza: Yes, Councilmember Chu, we agree that any type of system whether it's performance appraisals or anything they need to be looked at as a continuous improvement issue. And we do have a system. It certainly

isn't perfect and certainly can be improved. But we think the first issue is, it's not being utilized the way that it should. I personally worked with the bargaining units many years ago on the nonmanagement performance appraisals because we had not even consensus on what the employees could be rated on. We had employees in the same classification, sometimes in the same department that would be rated on different things. So we standardized those key elements on which somebody would be rated. I think one of the most important things we did there is we added a rating for a supervisor to be rated on their supervisory responsibilities. Because there are nonmanagement employees and quite a few of them that are supervisors themselves. So we first I think need to get that system we have in place being utilized correctly, trained, holding supervisors accountable and then improve them as we go and determine things that need to be modified.

>> Councilmember Chu: The thank you, that may be the next guidance for you Sharon is to review our review system.

>> City Manager Figone: Maybe I could make one perhaps closing comment is I think we're all committed to this goal. Let me just say that also to recognize that the organization has been through a lot of churn over the last few years, supervisors have been, you know, pulled out of the system. And do I think in some ways kind of like an amnesty program we need to hit the reset button and pick up where we're at now, and reinstitute what we have as Alex said and use that to its fullest including training supervisors on how to make the best use of the system that we have. And I think that's a very important starting point.

>> Mayor Reed: All right, I think that concludes the discussion. I can't remember if we have a motion or not on this. We got a motion by Councilmember Constant long ago. Hopefully no further discussion on the motion. All in favor, opposed, none opposed, that motion is approved. Thank you very much for another good audit report. We will move on to item 4.1, approval to set a public hearing on the business improvement districts, multiple districts involved. We have a motion to approve. All in favor? Wait a minute. Maybe we have a card. On the motion, all in favor, opposed, none opposed, that's approved. Item 4.2 is the schedule of park land fees to clarify the low income exemption for affordable housing pipeline projects. We have a motion to approve. All in favor, opposed, one opposed, Councilmember Oliverio, that motion carries. Item 4.3, deferred agreement for the lands of Viso.

>> Councilmember Campos: Move approval.

>> Second.

>> Mayor Reed: We have a motion to approve. All in favor, opposed, none opposed, that's approved. Councilmember Constant.

>> Councilmember Constant: Did we skip 3.5?

>> Mayor Reed: What was 3.5?

>> Councilmember Constant: Public hearing for sidewalk repairs.

>> Mayor Reed: We didn't skip it, I did. 3.5, public hearing on sidewalk repairs. Motion is to approve. All in favor, opposed, none opposed, that's approved. All right. Did we get the vote on lands of Viso? I think we did. That takes us to 6.1, valley transportation plan 2040. Hans Larsen is going to lead the presentation, I believe.

>> Hans Larsen: Mr. Mayor, members of the council, I'm Hans Larsen director of transportation. Just very briefly, the VTA is preparing an update to their 25-year regional transportation master plan. The last you one that was adopted was the valley transportation plan 2035. We're working on the update, VTP 2040. This is -- we're in the beginning parts of a two-year process and we recently went to the transportation and environment committee with a report on the efforts and the City's input into the process and they asked that the staff report be referred to the council. I'm here to take any questions.

>> Mayor Reed: Well, let's see if there are any questions. Councilmember Herrera.

>> Councilmember Herrera: Thank you, Hans. I just wanted to be on record that the list of these -- they are financially unconstrained lists because there isn't necessarily funding for these. But on the list is the pedestrian overcrossing from Thompson creek over capitol expressway that goes into the transit center at Eastridge?

>> Hans Larsen: Yes. We have confirmed with the VTA that that project is included on the initial project list.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Hi, Hans. I just wanted to thank you and your team. Manuel opiniononta sat down and anted several of my questions so I appreciate that. Looking at the unconstrained list and recognizing how much we have there, I think it's important that all of us recognize that the great majority is not going to be accomplished within -- by the time of the next VTP plan we'll still have most of these items still on the list I think it's important for all of us to be conscious of that fact. We're in a time of limited resources and even in times of plenty, we don't make it very far through these lists so I hope that all of my colleagues are appreciative that we're going to do all of us all of our best but this is -- this is a heavy lift. Anyway with that I'd like to move the item.

>> Councilmember Herrera: Second.

>> Mayor Reed: Motion is to approve the recommendations. Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I just like to say I notice that you have about 174 projects here. But they're either bridge repair and/or replacement, or trail projects. Which I would assume are some of the least expensive ones in the transportation community. Do you agree with that?

>> Hans Larsen: We have -- what this represents, to Councilmember Liccardo's point is essentially a wish list of everything that we'd like to do in terms of improving our transportation system. So it ranges from transit highways expressways, local streets, trails.

>> Councilmember Pyle: Right. I'm just saying when I went through those and marked the ones that would be, they are mostly the inexpensive to fix things. You really made an effort to keep the cost down.

>> Hans Larsen: That's correct.

>> Councilmember Pyle: Appreciate that. Thank you.

>> Mayor Reed: We have a motion to approve the recommendation to accept the report. All in favor? Opposed, none opposed, that's approved. We still have some Redevelopment Agency items, and parking authority item to take up before we go back into closed session. So we need to shift staff a bit, I guess. Convene the Redevelopment Agency board items. We'll take a minute to allow people to move and we will be going back into closed session to finish the closed session agenda upon completion of the open session agenda. On the development agenda, is there a report from the executive director?

>> Harry Mavrogenes: There is no report today.

>> Mayor Reed: 6.1, approval of lease amendment with SFC block 5 retail associates, allowing for the acceleration of the option to purchase agency-owned real property at block 5. Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. Bob I think you spent a lot of time talking with Regan on our team thanks for that. I just wanted to ask a circumcouple more questions in follow-up. As we looked at the block 5 retail space at 200 South 3rd, my understanding is several years ago, and I think it was probably before you were on the project, this option price was set at \$1. And is your understand of the deal that essentially the lease payments, the \$883,000 is essentially the compensation the agency was looking for the value of the land?

>> Councilmember Liccardo, Bob Stedler, real estate manager. That is correct. It was set up way back when, to make sure the agency was reimbursed for the cost of half of the paseo and the construction of the retail kiosk, the retail space.

>> Councilmember Liccardo: Okay, that helps explain that. So we think essentially that we've gotten the value out of it through that lease, okay. Is it our desire to exercise this option to get it on the property rolls, is that the motivation?

>> Mayor Reed: Sorry your mic is not picking up.

>> One motivation is to sell it to meet the revenue projections that we had in this year's budget and the other is to get it back on the tax roll.

>> Councilmember Liccardo: Okay. On the block 5 garage, I understand we use an income approach to assess what the fair market value would be. Is that due to lack of comparables or is that a standard approach to the use for parking garages?

>> There's not a lot of comps, plus having a ground lease situation, where as owner we can't control the rates. We're just getting the proceeds, and that proceeds on the garage and it's a 99-year lease. So we -- there's not much, many people who would want to take a risk on that.

>> Councilmember Liccardo: Right, okay. And thank you for taking the time with our team. I'd like to make a motion to approve, I think with the necessary modification. I think in paragraph C I think the total consideration is supposed to be 1.145 million is that right rather than 1.135 million?

>> That is correct.

>> Councilmember Liccardo: Okay, great I'd like to make that motion.

>> Councilmember Herrera: Second.

>> Mayor Reed: Motion is to approve that recommendation, three set of recommendations on the motion. Further discussion? All in favor, opposed, none opposed, that's approved. That concludes the Redevelopment Agency agenda items. We need to take up the San José parking authority item 2.1 which is to approve the minutes of the previous meeting. Motion is to approve. All in favor, opposed, none opposed, that's approved. City Attorney.

>> City Attorney Doyle: I just wanted to note, I think I -- we had a brief conversation with Hans. This is an entity that's been in existence for about 50 years. We're not quite sure why we need to continue it. So between now and next year's meeting we're going to revisit the need for the parking authority and we'll report back to council.

>> Mayor Reed: Okay. Clean up action sometimes is required. All right. We have the open forum, I think, is the last item before we go back into closed session. I have two requests to speak. We'll take that now. John mayer and Simone Morrill. John, come down to the podium. Bring that down a little bit.

>> My name is John mayer, I'm here you know to help you know to help keep police officers on the streets because if you laid off police officers there's going to be a disaster. And you don't want that. You want to you know keep police officers, an then I have -- I recall that if the city could borrow money from the you know government or wherever they could do it they have to do it, you know what I'm saying? And some of the stores like Sears, Safeway, all of these department stores, you got to you know, get them to cooperate to get money for the police department. You see? Because they're out there to protect people, you know, not hurt people. And I have families, you know, in New York they were police officers. But one was killed in the line of duty. And that's why I don't like to see people -- you know police officers getting killed. Or you know, peoples getting killed because they don't have enough police officers. And I hope the city, you know, the city council could work on things. You have to you know, you have to go to the battle. Like with me, I never give up. Like, in 2003, Clement's house came looking for me, they couldn't find me so I never gave up. And then I learned in August 31st, they're going to come out again. And they're going to award me money, more money than what they were going to award me 2003. And I thank God you know, see I'm a fighter, you know what I'm saying? I went through -- I filed a lawsuit against goodwill, I almost won it. They have an attorney, I didn't have one. But then, I just let go, and you

know, and moved on. And so I hope you know, you could try to, you know, to fight, to get the money. You see like

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>> Mayor Reed: I'm sorry your time is up sir. Our next speaker is Simone Morrill. I see no Simone Morrill. We will adjourn back into closed session. We will not be back in. If there's any action we'll report it out at the next meeting.