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>> Councilmember Constant: Let's convene the Public Safety, finance and strategic support committee. Our first item on the agenda is a review of the work plan. Deanna.

>> Deanna Santana: There's no changes for the work plan other than there's a request to hear item D-4 first because of staff schedule and I just wanted to note that item D-6 has been dropped from the agenda, the council acted on that matter on Tuesday.

>> I really want to --

>> Deanna Santana: Want to do it again?

>> Councilmember Constant: Unless there is any reason from anyone on the committee that we shouldn't take the D-4 first, then that is what we will do. So we'll move right in to item D-4, which is an audit of disability retirement. We have Sharon Erickson, our City Auditor, here.

>> Sharon Erickson: Good afternoon. You have the results of our audit before you. To summarize, we found San José's rate of disability retirement, particularly among our sworn employees, is much higher than other cities. We called it unacceptably high. In a snapshot of the retirement payroll, we saw two out of three firefighters and more than one out of three police officers are going out on a disability retirement, compared to 6% of Federated employees. This means literally that a high number of our sworn employees are retiring permanently disabled from performing the duties of their city jobs. When we saw these numbers the first question we asked ourselves was whether or not San José is an unsafe place to work. But our audit did not uncover any evidence that San José was an unsafe place to work. I don't mean to infer that jobs aren't dangerous or strenuous. But we didn't find evidence of it not being safe. The question has been raised about whether the workload's too high and whether this is leading to a high number of workplace injuries. In 2007 the city's risk managers studied this issue and found that our sworn employees do not have a higher work loads than other cities and so it was probably not the problem. And in fact, as a result of our review, we concluded the key factor driving San José's high rate of disability retirement is actually economic. It's the economic incentives associated with retiring on a disability

retirement. Disability retirements for both sworn and nonsworn employees are partially exempt from federal and state taxes. During the audit we learned that many of our sworn employees, in particular who took a disability retirement, were also eligible to retire on a regular service retirement but opted for the disability retirement instead. We believe the economic incentives have something to do with this. Furthermore during our 2009 audit of the city's workers comp program, workers compensation program, we learned that in the years leading up to their retirement, employees were frequently filing multiple workers' comp claims potentially to increase their chances for a disability retirement. In that audit we looked at 23 cases, and found 21 retirees had filed multiple workers comp claims in the two years leading up to their disability retirement. While as a city there's not much we can do to change federal and state tax law there are some changes the city can make that we believe will moderate the high rate of disability retirements. We recommend the city reconfigure the process for reviewing disability retirement applications to move the process to a disability committee made up of a panel of experts with medical expertise, or experience in workplace injury and that the employer as well as the applicant be represented by an attorney at those proceedings. Another change that we recommend is for the city to tighten up on the eligibility requirements for a disability retirement. During the audit we found that retiring employees had often worked right up until the day they retired either in their own jobs or in a light-duty job, modified duty job. This condition raises the obvious question of how these employees could be considered eligibility for a disability retirement, when they were still working at their regular job when they retired from the city. So we recommend the city council consider taking steps to amend the charter and the Municipal Code, to clarify the purpose of disability retirement. We believe that purpose is to provide a stable source of income for employees who are incapable of engaging in any future gainful employment but are not yet eligible to retire and to consider, and the city council should consider limiting disability retirement benefits to employees who are incapability of engaging in gainful employment. Otherwise, decisions will continual to be made in accordance with the city charter, which now reads, and is based on whether or not an employee is capable of performing duties and functions in the same classification that they were working in. We also recommend the city council takes steps to amend municipal code to require employees to declare their intention to apply for a disability retirement at the same time as they file for the service retirement, as currently required under the city charter but not enforced. Finally, because offul of our disability retirees are paid by the city for workers comp injuries at the same time as they're receiving a disability retirement, we recommend the City Council take steps to amend the Muni code to impose a retirement benefit

offset for sworn employees who are receiving disability retirement payments that replicates the offset currently in place for retiring nonsworn employees. There is also an open issue for the city regarding sick leave overpayments that need to be addressed. Our report includes a total of six recommendations to address these issues. We'll be presenting the -- we presented the report this morning, to the Federated retirement board and plan to present the report to the Police and Fire board at their next meeting as well. And before I turn it over to the administration I'd like to thank retirement staff including the board's medical director, and the city administration for their time and cooperation during the audit process. Disability retirement is a difficult and complex subject. The administration's response to the audit is included in the yellow pages of the record and with that I'll turn it over to Jennifer Schembri from the City's office of employee relations who may have some comments.

>> Good afternoon, Jennifer Schembri with the office of employee relations representing the city administration. As Sharon indicated, our response is in yellow attached to the report, and we are in general agreement with the recommendations contained in the report, many of which are already under consideration, and we thank the City Auditor's office for their work on this. It is very helpful and useful information for our upcoming retirement reform negotiations.

>> Councilmember Constant: Thank you. I do have a few members of the public. If the committee doesn't mind, I'll take those first. First speaker is Jeff Walsh followed by Steven Strout and then Mr. Wall, you put varied, is this one of the varied ones you wanted to speak on? (inaudible)

>> Councilmember Constant: Okay, thank you, thanks, Jeff.

>> First and foremost it should come as no surprise that firefighters and police work is very dangerous work and very strenuous on the body and the high rate of disability retirements confirms our belief that this is true and we do believe it's one of the considerations is from understaffing and overworking an already understaffed fire department. This leads to disabling injuries and/or injuries. So there are a number of issues that need to be addressed here and really I'm hoping for a measured response from the city in working with the unions and knowing that the positive work that we've already had in the last few months in coming together and reaching

agreements through the collective bargaining process avoids a lot of controversy and avoids a lot of angst and disgruntlement between the gross and the city administration and hopefully we can resolve these issues through cooperative and working partnership with the city. In that regard, San José firefighters have signed off on a pilot wellness program. We hope to encourage that to make its permanent. It's been sorely lacking and the real solutions come from working this issue from the ground level up. Preventative medicine, preventative maintenance, the investment up front is worth a pound of cure in that but we also need to work in the next step back to work rehab and better back to work programs working with workers comp reviews and treatment for our workers, who sometimes wait around for months, for therapy or shots which leads to the next phase of high level of disability cost to the city because you have to backfill those positions with other employees who are not injured. All that said, injuries for firefighters and police officers and I'm speaking for firefighters on behalf of them, the police officer can speak for themselves but in that whole group injuries are still going to occur on a regular basis and when they do occur we need proper rapid treatment so we can all get back to work. We all want a happier and healthier lifestyle pain free and in doing so we will return to work which reduces the cost. So one more point I wanted to point out is that all these disability retirements they don't add up to any more -- the disability retirement after serving a career as a firefighter a lot of people that I know most people that I know that retired are disabled with injuries whether reported or not. Just about everybody I know has a neck, back, shoulder, hip, knee, some type of injury, after serving a career of getting on and off that fire truck for 25 to 30 years, 10 to 15 times a day. It takes its toll, as well as lifting those patients that are between those awkward movements that sometimes you just can't avoid to do your job. So we are hoping that that's recognized by the city council and the city staff and working with the unions to come to better place of understanding and agreement as we move forward.

>> Councilmember Constant: Thank you, Jeff. Stephen Stroup.

>> Yes, I've lived in San José for 41 years. And this is not a new issue. This has been going on for ten, 15 years. The statistics show that it's an abuse. There's way too many disabilities in the fire department, and police department. I think that you need to have a medical person on the board, like was indicated. This and a couple of other abuses need to be stopped. Because the taxpayer can't afford this ongoing expense. Like the gentleman

mentioned, I think adequate care should be given if someone does get in an accident on the work or disease or something like that but the numbers that you're showing, two out of three I mean that's just -- take a first class in statistics in college you'll find that that's not accurate. And who's on the board that decides, it's a union person and who else? There needs to be a medical person to decide who really is disabled. I hate to think that all these disabled firemen are out running triathletes and triathlons and rodeos in Elcott in Idaho so I hope the recommendations are taken.

>> Councilmember Constant: Thank you sir. Members of the committee with questions, comments, concerns? I have some but I'll -- okay.

>> Sure.

>> Councilmember Constant: I usually go first I give you guys the option you didn't even take it. I do think it's important that we look at this in the context of the workmen's comp issues that we've discussed previously because I do agree with some of the comments that Jeff made about the getting people back to work. And addressing their injuries when they occur. And you may recall when we had that meeting here, on workmen's comp, one of the concerns I had was treating the injury never came up in the discussion. I think that's a significant issue. I know people who had injuries who, had they been treated quickly wouldn't have had long term limitations but because they didn't receive those treatments quickly they had significant limitations. Maybe not enough to retire but significant limitations from not getting treatment. I know we talked about what other departments are doing. I think wellness program that the fire department is starting it is a good start in that direction. But wellness without quick treatment and diagnosis and treating people immediately I don't think will help as much as we need it to. And I think that's going to be compounded quite frankly because of the budget that we have in front of us with potentially downsizing our workmen's comp division and all those issues that we have there. So I don't want to dwell on that much longer. The question -- there's a couple of questions that came out of this report that I wanted to ask. One is, we know that the charter says that you can't -- you have to apply for your disability retirement when you're employed yet we don't seem to follow that. In all the times I've been here I've been told we

can't violate the charter, we have to follow the charter. How did that come to be and is there a reason we can make that change immediate without any action because it's in the charter?

>> Sharon Erickson: The Muni code right now is in conflict with the charter, in our opinion. And the charter establishes minimum benefits. I think it's a question of interpretation, how you interpret the charter. We did interpret it to mean that employees should file for a disability retirement while they were an employee. That would prevent or help mitigate some of that empty exercise of trying to figure out years later if we had a job that somebody could fit into. Let me turn it over to the attorney's office.

>> Sharon is correct that the charter sets forth minimum benefits for retirement. The council, by enacting changes to the Municipal Code, can set forth greater benefits. And that's our understanding of what has occurred.

>> Councilmember Constant: Well there's a difference between benefits and limitations. I don't think we can do anything in the Muni code that supersedes the charter. Because the charter is a higher authority. Isn't that correct?

>> That's correct. The charter does -- is the overriding principle that you have to comply with. But the ability to file later can be seen not as a limitation but as a benefit to the employee, to file at a later period of time. And that is the reconciliation between the charter and the medicine code.

>> Councilmember Constant: I think we do need to look at that a little more closely. Because having been served as a trustee on one of the pension boards and now as a nonvoting member of both boards and watching these go through it is interesting to see trying to reconcile something that happened two, three, four years ago, and making determination what could have happened back in time when you don't have any ability to know what really would happen. There is another point in the audit about whether or not the city is adequately represented during the retirement hearings. And this is something that I had brought up previously, in my role on the retirement boards, given that the retirement process for disability puts the burden of proof on the applicant. Yet we seem to run our meetings on exactly the opposite perspective, where the assumption is that the city has to prove

that there was not. Yet there's no representation from the city to do that. Have we looked into that at all, or will we be looking into that?

>> Yes, we can look into that. In terms of the representation at the meetings, the City Attorney and then the outside counsel sits as representatives of the -- or to advise the board in the conduct of the hearing. If the city administration wanted to have an attorney present from the city attorney's office to represent the employer's interest, that would be -- that would be fine.

>> Councilmember Constant: Okay. I do think that's something that bears some further discussion. And then one of the -- I guess really troubling things to me was the chart on page 32, and that's the fact that we have people that we paid out, large sums of money, and apparently some just refused to pay. Some for a number of ones over three years, with no payments, and I understand that the recommendation for aggressive steps. If -- why can't we have a stipulation or why can't we just attach the retirement checks, that this is due, and it's going to be in X number of installments and this is the way it is?

>> The -- generally speaking, retirement is exempt from garnishment under state law. So we would not be able to proceed -- first we would have to proceed to judgment in order to get an order from the court. But it's in the case specifically with respect to retirement benefits, retirement is exempt under state law.

>> Councilmember Constant: Now, can you condition the payment of sick leave with an acknowledgment that if there's overpayment, that there's a method for recovering that money? Being that obviously, we're not enforcing the part that they have to say they're going to have their disability retirement before they leave and we're at an exposure of approximately I believe it is 25% of the sick leave payout is at risk to the city. What are our options there?

>> Well, we can look at whether there can be -- something can be fashioned at the time that the employee retires. I think there was a suggestion made in the audit to that extent, in that regard. Whether or not -- I don't

know if we would be able to legally enforce the promise of the employee to have their retirement checks garnished by the city on a voluntary basis.

>> Councilmember Constant: Other committee members?

>> Councilmember Nguyen: Thank you chair. I have a couple of questions and some comments. Sharon when you and your staff look at some of the other jurisdictions, in preparation for this report, did any of the cities like Los Angeles, San Francisco, San Diego, put a cap on the income earned from outside employment for people who are on disability retirement?

>> Yes. The outside earnings provision is in place, in all the jurisdictions that we looked at. There are limits, though, for sworn, as soon as they have been enrolled in the plan for 20 years, they no longer have to file their income tax return or a W-2 with the city. And Federated it's an age limit requirement. So age 55 they are out from under the monitoring process but until that time they do report to retirement services. Currently there are 70 people on her spreadsheet and of those 70 actually only three are over a limit where a certain amount of their retirement pension is reduced. To the extent the outside earnings we can only make them whole, we can't make them better than they were after they settle their pay with the city.

>> Councilmember Nguyen: So every jurisdiction that you looked at, there is some form of cap?

>> They do monitor yes.

>> Councilmember Nguyen: But we don't have a cap here with the city?

>> Well, essentially it is a cap, Madison because again, they'll look at the highest last year base pay earnings. And to the extent that they report over and above what the disability pension is allowing at that level, the outside earnings, then the disability retirement check is reduced.

>> Sharon Erickson: The cap is only in place until someone has reached the 20-year threshold, or the age threshold?

>> Right, age-related for Federated and participation in the plan for --

>> Sharon Erickson: Let me say, that was not the area where we found issues. So the folks who are retiring out young, early, those folks do not appear to be working. Many of them are not working and they do indeed appear to be permanently disabled. It was the other area that we spent more time looking at.

>> Councilmember Nguyen: And then, in regards to your recommendations for the formation of the disability advisory committee, I was just wondering if staff can speak to -- I absolutely agree with this recommendation. And I was wondering, you know, in the interim period of putting this initiative or potentially putting this initiative on the ballot for a November vote, is this something that staff can look into in terms of, you know, creating a board that would look at the requirements for disability?

>> Deanna Santana: I think we would need to do more study and come back as part of the cross reference and provide a report-out.

>> Councilmember Nguyen: I look at the response from staff and I didn't see any response to that particular recommendation.

>> Deanna Santana: On the actual creation? Let us do some research as to what does it take, whether it's by Muni code or what specific action is required on behalf of the city council and we'll have that information verbally by the cross-date I believe it's maybe 23rd.

>> Councilmember Nguyen: And then to some comments on the auditor's report, it is very evident that the City's disability retirement system is broken in every way possible. And I think it is really in dire need of reform. I think that it's so broken in so many ways that without a voters approved change in the charter there is really no way

that we can get the system to be more reasonably fixed. But at the same time I don't think that at this point we should focus on individuals that actually receive different types of benefits because this is a system that's broken. Not the individuals. I mean they are following the -- they're following the guidelines and the requirements that is set you know in our program. And so I think that the blame should be not on the individual but rather on the system. And I think that's where we should focus our attention and I really highly commend the auditor and her staff for putting together this report. You know, it's something that's really needed and I think it's very timely. Obviously I'd like to see it come back a little bit earlier because we saw the report that came out in 2007 after the Mercury News did their story in 2006. And now it's 2011. So it took a good four years for this report to come out. So I wish they would have come out a little bit earlier. But it's better late than never. The other things that I want to ask, I think this more goes to staff. What is the process for us to put this initiative on the ballot in November? I mean, what do we need to do? Is this something that the city council has to take a vote on? And when is the last date that we can actually --

>> 88 days before the November election.

>> Councilmember Constant: It's the first meeting in August, I checked it.

>> Councilmember Nguyen: So I assume that this is going to the full council for a discussion. And is that something that we can discuss when we discuss the matter at the city council meeting?

>> Deanna Santana: Yes, at the time then council can begin discussions around placing it on the ballot and direct staff to come back if that's the case with the appropriate ballot measure language.

>> Councilmember Nguyen: Thank you, that's all I have for now.

>> Councilmember Constant: Anyone else? Mr. Oliverio?

>> Councilmember Oliverio: Just want to thank the auditors office for the report. Obviously this has garnered a fair amount of public attention, by the results of the audit, and also look forward to the recommendations at the council meeting. Thank you again for the work. I guess one question I would ask. So we had a different ratio of firefighter injuries to police. And at any given time I think there is a difference on how personnel are scheduled. I believe police officers, chief Moore, work ten hours a day and Chief McDonald, firefighters work 24 hours a day. Is there any correlation to fatigue or working too long in a single shift for fire that would lend you to belief that's one reason that they might have higher incidents of injury?

>> Sharon Erickson: You know, studies have shown that that is not necessarily the cause, that any reasonable person that could conclude that there could be a difference in that way. One of the things I forgot to mention as part of my presence was our very first recommendation which is to fully support and implement that the agreement between the firefighters union and the city to improve wellness. Anything that we do to improve the overall health and wellness and safety of the employees is absolutely required. It's just that that was not what we believed was the primary cause in this case, necessarily. Or that at least the cause was aggravated by the economic incentives.

>> Councilmember Oliverio: No, I concur, as well. I think a wellness program would be -- obviously is going to bring benefits, because currently the status is there's no physical requirement after the academy, you don't have to do, you know, a pushup. I think that's an important thing. I'm glad a consensus was reached on that item. Thank you.

>> Councilmember Constant: Kansen, anything? So two more comments. One, Pierluigi made me remember. A while back when we were talking about injuries, specifically at the fire department, I think it was a few years ago, I had asked if we could look into whether in was a greater incidence of injuries when people were working mandatory overtime or when they were working a second 24-hour shift or perhaps a third 24-hour shift on shift trades and things of that nature, I don't remember whether or not we got anything back on that. So I think that again could tie in to all this, because I really think that the wellness, the workers comp and the retirements are all interwoven together. And then the chart on page 20 also has some -- an interesting breaking point at 2006 to

2007, especially in the Federated board. And can you see that it was always high and then it dropped to 50% and stayed fairly low for the remainder. I should know this answer but I don't. Is that when they changed to the independent hearing, staff hearing panel on the disability retirements that makes the recommendations or had that always been in place?

>> Sharon Erickson: No, I believe the independent hearing was much more recent than that.

>> I want to say 2005, maybe about, or 6.

>> Sharon Erickson: Oh, that long?

>> Councilmember Constant: You know I think we should look at that because it's interesting the exact time that Police and Fire went up, Federated went down. One of your recommendations is to have an independent evaluation of disabilities. And we know that Federated did that at some point. If that happened to be right at that point, I think that would be significant as well. Any other questions or comments? Jeff, are you trying to signal me? I'll let you, come on up.

>> Thank you. All the ideas that you guys have are valid, and I think can be worked through. And I have ideas on how to fix those issues in working with the city on most of them. And you know, solutions come through working together. That being said, the disability retirements are approved, also, you know, for clarification for the public and I know that you guys know this, that the city medical doctor is the person who reviews all the case files through a very thick microscope to make sure that these disability applications are indeed valid and they all are when he approves them and he submits that recommendation to the retirement board. The retirement board rules on that recommendation, so I don't believe there's any abuse or fraud happening. I think the city's medical physician does a very good job in reviewing the cases, and the workload, and I think San José's right in the ball park as far as retirement, disability retirement approvals when measured apples to apples comparisons with other jurisdiction. And true apples to apples comparisons are looking at everything on a similar case -- on a similar basis. Municipalities report their disability retirements in many different ways. If they're service level eligible, some

don't count the disability retirement if that's what actually happened. San José does. Calls for service are not counted the same in everywhere jurisdiction as calls for service in San José. So there are clarifications to be made and there are reasonable solutions to be had, and I think -- I just want to reiterate the fact that working together under reasonable conditions enstills trust and keeps that moving forward, and we can get through this in a far cheaper way than putting something on the ballot that needs to incur city cost when there are workable solutions together. So we can save money all around.

>> Councilmember Constant: Thank you, Jeff. I will point out thought that there is at least one instance that is documented where the board did not follow the medical evidence. And again this is just a sample of a small number of cases. I would also point out that having observed a large number of these as they proceed, I have seen where people's relationships with people who are in front of the board will be commented on and weighed as part of the discussion for retirement. And I think that's something taken as a whole we have to address. Wand that I'm going to ask for a motion.

>> Councilmember Nguyen: Motion to accept the audit and request reference for full council discussion.

>> Councilmember Constant: Thank you, second? Any opposed that motion carries. Thank you, Sharon, for another great job. So we're going to go back in order so we have our consent calendar, with four items on it, do we have a motion on the consent -- hold on a second here. Mr. Wall, why don't you come up and speak on item C-3, and then we'll take a motion after that. Don't get too comfortable. It's only two minutes.

>> David Wall: No, no, I'm not going to speak that long. What really got my attention was, first of all the legislative work out of our office of City Manager. The listing of all the different assembly bills and whatnot has a couple of themes in it. One theme is accountability. The other theme is a lot of audits. Now, you should take note, we have two rose gardens for one purpose, to provide you rose petals to shower the auditor every time she comes up here with a report. Because she's always thanked and rightfully, so but in this budgetary mess that's coming along, you should be very prudent in retaining and refloating their salaries, because the auditors and the attorneys represent the brain trust of the organization, and that's what these legislative ideas are playing to, and

this is from the state. The last thing I want to mention on this list, is we have seen more work, my opinion, my humble opinion, from former councilmember Campos, who is now up in the legislature, she has several bills up there. And these can be very noteworthy, and I'm taken aback, that it would have been nice to see a lot of her other bills down here in San José but then again that's past history. Thank you very much.

>> Councilmember Constant: Thank you Mr. Wall. Do I have a motion on the consent calendar? I think that was a second. All in favor, any opposed? We will now move to item D-1 which is our quarterly report on the Consortium for Police Leadership in Equity. Much easier said is CPLE.

>> Deanna Santana: I did see chief Moore and Kim leave. So if you'd like we can move on to the --

>> Councilmember Constant: But you're here to present, right? You can sit wherever you'd like. There's only a couple chairs left.

>> Hi --

>> Councilmember Constant: Bring the mic real close.

>> Deanna Santana: Let's get you the other mic then.

>> Councilmember Constant: So can you have any seat but the one you chose.

>> Hi, I'm Meredith Gamson Schmidt from the Consortium for Police Leadership in Equity and I'm here to give the quarterly report which will be very brief. First we would like to thank chief Moore for continuing to support the CPLE's efforts. We are very appreciative of that. And obviously the City of San José is grappling with budget constraints just lie everywhere else and in spite of all that we were still able to get a significant amount of data turned over to us in the last month. So having just received that data we are in the process of translating that into an analyzal format and hopefully will have some results for you and more concrete analysis before the fall. So we

are anticipating that. Additionally we are looking forward to working with community members as we're constructing our racial profiling and disparate impact indicators over the course of the next few months. The chief has identified an advisory council and we are looking forward to reaching out to them as well. That's all we have to report right now.

>> Councilmember Constant: Thank you. Any questions from up here? I don't have any cards from is members of the public. Now I'll take a motion.

>> Councilmember Nguyen: Move acceptance of the report.

>> Councilmember Constant: We got an appropriate second there. All in favor? Okay. Any opposed? You passed.

>> Thank you very much.

>> Councilmember Constant: Thank you very much. Mr. Wall's favorite employee is on her way back up. So now, we're moving to the monthly report of activities from our City Auditor's office.

>> Sharon Erickson: Very briefly we issued three reports during the month of March. We issued the semi annual audit recommendation status report, the issue of the public safety bonds which will be presented to their citizen oversight committee in May and then we issued the audit of the City's association of Santa Clara County which is an annual project we do at the request of the nonprofit. I did want to point out, just kinds of give ourselves a pat on the back. We received the silver knighton award from the association of local government auditors, a very esteemed group, for our audit of pension sustainability. We are also continuing to do our classes on performance measurement, the latest one is a four-hour session on, are you measuring what matters? That we provide to the city staff through the citywide training program. We get training hours for preparing the training, and city staff get training hours for taking the training, so it's a good thing. And then we are continuing to present what we call the

road show on pension sustainability which is just simply the audit results to a variety of employee groups. You had two more audits on this week's agenda and you can see the status of other projects in our report.

>> Councilmember Constant: Thank you very much. I know your assignment has not yet started, list is getting short so we'll find some more programs for you to work on. Any questions or comments? Motion to accept the report.

>> Councilmember Nguyen: Motion to accept the report.

>> Second.

>> Councilmember Constant: All in favor? All opposed, we got it, all right, so our next one is the January financial scan of city-funded community based organizations.

>> Sharon Erickson: So this one is really an informational report. The city provides substantial funding to nonprofits that provide support to the San José community and/or operate city-owned facilities. City is responsible for funding recommendations and grant management using financial and other data. This financial scan is really a piece of the process of transparency, with nonprofits, in accordance with sunshine reform. And we really, it really is a partnership between my office and the office and the other offices in the city where we use the financial expertise of my office to assist in the analysis. So this document summarizes key financial information for 26 organizations, that received more than \$250,000 in annual financial assistance from the city. The scans are based on the organization's most recent financial statements, provide a visual presentation of key questions related to the financial condition. One of those is total assets and liabilities or what most of us call net worth. As shown on page 15 of your report, the net worth of organizations which receive city funding varied from \$100 million to a negative \$1.3 million. We look at working capital, which is how much does the organization have in liquid assets at any given point when we're looking at the scan. On page 18 of the report, you can see that working capital varied from \$90 million to a negative \$4 million and one case, three organizations had negative working capital. We also look at -- we compare cash and average monthly expenses. We compare revenues and

expenses, looking at whether or not the organization is in a surplus or deficit position. The graphic on page 22 showed that eight organizations this year were in a deficit position. I believe that's actually better than last year. We look at revenues by type and what percent of funding is from the City of San José. The chart on page 25 shows that that percent of funding ranges anywhere from 1% for the Santa Clara family health plan to 89% for Team San José doing business as the San José convention and visitors bureau. And finally we look at expenses by type so what percent of services are for program services. The financial scans themselves begin on page 28. The City Auditor's office has done a series of audits of nonprofits. We've been called in to look at the City's relationship with a variety of organizations. And much progress has been made in the City's oversight of those organizations. We do have some recommendation outstanding and this report includes two additional recommendations. One is that the annual list of CBO funding be accurate and complete. So we need to make sure that the city can produce a list that's accurate and complete of all the money that we're giving to nonprofits. And second, that designated community based organizations post their financial statements on the web in accordance with the City's sunshine requirements. At the time of our review half of them had not but shortly upon being notified that the auditor was coming, almost all of them immediately posted financial statements. We just need to make sure that's due without me knocking on the door, please. With that I'd like to thank the City Manager's office and I'd especially like to thank the community based associations and their auditors for all their help in putting this report together. The administration has reviewed this information and their response is shown in yellow pages attached to the report and Jeff Ruster from the Office of Economic Development may want to make some comments.

>> Councilmember Constant: Jeff.

>> Thank you Sharon and thank you councilmembers. Just really briefly on behalf of the City Manager's office we do want to sincerely check Sharon and her team. The financial scan is a lot of work and as Sharon mentioned they bring a lot of expertise that we are still developing within the city so it comes to great value to us. The nonprofit scan this year covers about 80% of the overall financial assistance that we provide to nonprofits, so it is a big part of our monitoring efforts. There also is extensive monitoring that departments do on the program side and on the fiscal compliance side, so this is an excellent complement to that, and again, we are appreciative of

that. We have met like we did last year with the first financial scan, we have met with all the departments to get their assessment of the situation, and these are based on audited financial statements. Quite often the departments have more recent financial data that has been produced by the nonprofits, so we have met with the departments and, where appropriate, are developing corrective action plans, again, like we did last year. And I believe that through this kind of citywide effort what we referred to as the nonprofit strategic engagement platform and to use the City Manager's term, we feel we have a much better management grip of the overall financial health and impact of the portfolio. Where appropriate we will have partnerships with organizations like Score, Deloitte, Compass Point, the Health Trust, where they are providing at no cost to the city comprehensive at times technical assistance to these nonprofits, to -- as part of the corrective action plan. Again we are appreciative to Sharon and her team for her efforts.

>> Councilmember Constant: Thank you. Questions or comments from my colleagues?

>> Councilmember Nguyen: Just one quick question. So the fact that many of these organizations end in deficit each year, it's kind of alarming. I mean is this a normal trend?

>> I think clearly that -- I guess I could answer that a couple ways. You know clearly what's happened over the last three, four years really with giving to nonprofits and funding reductions from the public sector and from corporate philanthropy that has played a big role in this. Every organization is different. What I can tell you is I think when we look at the portfolio and we hear back from the departments I think there is a realization that many of these nonprofits need to change their business model. Particularly those you see having issues here. And the city has taken I believe very strong corrective action including in some cases defunding organizations when they find that appropriate progress is not happening. So I'm not sure that directly answers your question. There are a lot of nonprofits that are doing well. I think the ones that tend to stand out are the ones that aren't doing well. So you know again it's been tougher on everyone. The private sector, the nonprofit sector, government, everyone is struggling to some form or fashion. But I think even Sharon mentioned briefly I think relative to the first financial scan the overall health seems to have improved.

>> Councilmember Nguyen: Okay so I guess in my best assumption this happened because you know the downturn of the economy they're not getting the kind of support, discussion support from corporations or foundations that they have traditionally received in the past when things were good. And so it's not -- not like a normal trend that we're seeing and we're hoping that if they change their operation, then hopefully, this is not something we're going to see in the future because you know if you see a deficit at the end of the year every year going forward, I think that needs to be a change in how they operate their nonprofit.

>> And I think that's what's changed a lot in terms of the City's approach to the nonprofits that we are supporting. Now we are taking into account the financial health of the nonprofits and not just the programmatic impact. But really working with organizations that we feel can live up to the terms of the contract, and we won't have any problems mid term with the contract. So that's the early warning system aspect of this so it's really kind of the three-part program, the fiscal compliance piece and the financial health of the organizations. I don't want it to be left here. There are a lot of nonprofits that have gotten this message a while ago. There are still some struggling and there are some outliers that it's a struggle, it takes a lot to get them to think differently. I think it takes a lot to get to the point that you're talking.

>> Councilmember Nguyen: Thanks Jeff.

>> Councilmember Constant: Anyone else? Mr. Oliverio.

>> Councilmember Oliverio: Again thank the auditor for their work, and appreciate the early notification to the elected body versus when it's a little bit too late. And we've this, obviously we've been talking about it for multiple years. One thing I just find interesting is that on the Santa Clara family health plan where they weren't going to be able to continue their services unless the city continued money that we had promised during the dot-com boom, which could be used on police or libraries, but to find out they actually have the most money in the bank by tens of millions here. So it's just an interesting factoid, so thank you.

>> Councilmember Constant: I wasn't the only one who saw that, so couple comments. First I think this is a great tool for us to have. I think what could make it better is if we could have the historical data right next to the current year's data so we can see -- I know we have the asterisks on the chart that say, this is the second year. But as we go forward, kind of expounding on what Madison said, it might be easier to see trends. Because I know that while some of this can be related to downturns in the economy, we all see names in there that we all know we've seen in the past, sometimes five years ago, 10 years ago, 15 years ago, that have had similar problems. So I think it's really important for us to look at that. Something that I know we've discussed in the past is, as Pierluigi pointed out, there's some things where we give money that's kinds of outside of our purview. But people rely on it. Outside of maybe what our charter says we should be doing. But there's also some of the groups that we give money to that do things that we would be doing, had they not been doing it. So I think having the chart that shows the percentage of funding, San José's funding compared to all the funding, is good, because you can see whether or not we're getting leverage or not for our money. Are we paying 100% of the bills or 1% in the case of the one Pierluigi pointed out. What I'd like to see somewhere, whether it's in this type of report or in our budget discussions, is really which of these are supplanting city services? Because what is tough for me right now, it's been tough for me the whole time I've been here but it gets bigger and bigger and tougher and tougher. We can't do the things that we must do, and there is a whole lot of things that get done that some would say we don't have to do, other of us say we probably shouldn't even be doing the first place. But if they are not supplanting city services, I think we have to look at them with a completely different lens, a much more critical lens than we do if, say, we were going to spend \$1 million doing service A and a nonprofit does 80% of that job for \$400,000. To me, that's a very clean, good investment of our money. Maybe they're leveraging outside money, maybe they're just doing it in more efficiently. But there are others that are wholly outside our purview, and if they're not supplanting a city thing that we should be doing, then maybe we shouldn't be doing that and spending that money for police officers, firefighters, dispatchers, libraries, community centers, those things that are clearly city purposes. So I'll let you guys discuss that whenever you want to figure out where the best way to present that but I think it's something we should have.

>> Deanna Santana: I think the best way to bring that forward is part of an MBA so the council has the information and it gives us a little bit of time through end of may to prepare that for the council to consider.

>> Councilmember Constant: Thank you. But other than that I really appreciate the report because there's a lot of money and we get a lot of questions in our budget meetings and community meetings about what we are or are not getting for our money. I think it's important that we keep an eye on those red numbers, especially when they're red for a long time. Another good job. Do we have a motion with a cross reference I believe.

>> Deanna Santana: Cross reference for may 4th and separately we'll work on an MBA.

>> Councilmember Nguyen: Motion (inaudible).

>> Councilmember Constant: I didn't have any cards, is anybody interested in speaking? That motion passes unanimously. Number 5, a presentation from the Silicon Valley regional interoperability authority. The agenda language is a little different than the --

>> Deanna Santana: There is attached to the cover he letter that executive director Mike Miley submitted, the reason why we added this to the work plan approximately a year ago staff brought forward a request to participate in the regional effort to establish a JPA. It's since then, the council approved it and it started operating as a JPA. With all of the interoperability issues that are happening regionally, I did want to suggest as part of the council's action that we add to the work plan. I'll bring that back to the rules process, a report at this committee level to hear issues related to interoperability broader than the SVRA.

>> Councilmember Constant: I just wanted to clarify, the agenda says proposed joint powers agreement, but there's already an executed joint powers agreement, so we're just reviewing what's already been done.

>> Deanna Santana: That's true. (inaudible)

>> Councilmember Constant: So we're going to cross out everything after the word and just to make it very clear. And I want to thank you for bringing this to the committee. As you're aware, Pierluigi and I set on the SVRIA

board. And I tell you it has been a very challenging assignment at times. Because not only is there all this stuff happening with our individual police departments, fire departments, cities, and the JPA but then there's also the work group, there's the Bay Area UASI, there's that other Alameda County, doesn't exist, does exist type thing, all the grants, all these things that are out there floating, and none of them connect. Including discussions about another JPA or JPAs or JPA of areas. And this is an area where there's going to be hundreds of millions of dollars spent, and I think it is so critically important that we keep an eye on where the money goes and where it doesn't go, what gets built, what doesn't get built and most important for me is a very clear path of accountability. And I think and this is something I know that I've already discussed with Deanna but I really think we have to look at the JPA agreement that we have in place now. And talk if -- talk about is the agreement appropriate for all the parties that are involved. One of the areas that I've been concerned with is the fact that in the JPA agreement, there was a delegated authority to the working group, from the board of directors, so the working group has authority that cannot be retracted by the board. But the board is the level where the accountability rests. So when you have people like Pierluigi and I sitting on the board, we hold the responsibility, but we have no control over the authority and how the authority's being executed. And I just want to make sure -- I trust all the players that are there now but these organizations are built to outlive all of us. And if this interoperability project is built correctly it will be an incredible asset not only for our community but for our nation as a whole as they all get built out. And we are going to need it to function well and be accountability to the residents for their taxpayers here, the state dollars, the federal dollars and everything else that's involved. I just would like our staff to look at it from the interests of the City of San José. I know Pierluigi and I are looking at it from the interest of the board of SVria and I am sure the other members of the board are too. We have Mike Milus in Silicon Valley regional interoperability authority with us. Just wanted to offer, if you have anything to add?

>> Just a brief update, thank you for inviting me and thank you for giving it a little bit of attention each year, as Councilmember Constant mentioned. There are a lot of complicated issues that surround the issue of interoperability. And things happen at different levels. There's a lot of coordination, a lot of synergy and yet some separateness in the different initiatives that are being undertaken. And so it is a constant challenge for us to understand what others are doing, try to stay in sync with it, embrace the things that make sense, ask sometimes difficult questions occasionally on things that don't make sense to us and sort through it. I would echo your

concerns about the importance of accountability of spending the funds appropriately. And making good investments. So that allows me to transition a little bit and thank some of the champions who have been involved in this effort, not only in the last two years but for -- some of them for the past ten years, chief Moore has been an advocate, for a long time, of the concept and the merits of a JPA. Deanna and Diane urban sit on our working committee and we're both former members of the steering committee and as you mentioned Pete, you and Pierluigi are both members of our board. So I appreciate the interest aall of you have shown and continue to show because you are all very busy people and this is one more complicated thing to try to digest and we appreciate your perspectives. In the past year I think we've done some good things of continuing that ten year track record of collaboration in working together. We've worked hard to try to leverage the past investments. One of our primary investments is the digital microwave system, which we use the acronym of ECOM for. The city of San José specifically has been able to benefit a great deal in the last year by using the Ecom system to enhance individual radio channels and turn them into simulcast radio signals. I won't get into the nitty-gritty technology behind it, but it really makes the radio system work a lot better for the police officers and the firefighters. It's a little more reliable and it was something that wouldn't have been possible without the new digital microwave system. So as we speak today all of the City of San José's Public Safety radio traffic is carried over this microwave system. So you are the single biggest user of one of our primary systems right now and have been working to make the best use of it as is possible. We wish we had unlimited funds. We don't. And so we take advantage of the funding that we have to try make incremental progress to try leverage the things that are in place. We have been successful in receiving some additional federal grant funds and so there are projects underway to further enhance and build out the microwave system to work on a CAD to CAD project which will better connect all of the different public safety answering points, and their CAD systems which is not CAD for architectural drawing but computer aided dispatch CAD so that's a complicated area of technology and we hope to see some enhancements there over the next few years. There are a few things also taking place enhancing regional radio systems. Some of that incrementally by putting in smaller solutions, more affordable solutions to match available funding, but nonetheless enhancements, and at the same time, planning for some of the bigger investments in the future, if we can find the funding to do that. It's a little bit like retrofitting a Bay Bridge. You want to do it before the next earthquake if possible. And so hopefully we'll make enough enhancements to the radio systems and the other systems to stay ahead of the need

in a crisis, and this a lot of people are working hard to try to get to that end. So if there are any questions about anything in the report I'd be happy to answer them.

>> Councilmember Constant: Thank you. And chief do you have anything to add, or are you Aokay?

>> No, actually -- (inaudible).

>> Councilmember Constant: Yes.

>> (inaudible).

>> Councilmember Constant: Thank you Diane. And then my only request I would make is because the public has a hard enough time watching what we do if we can have definitions on all these acronyms. I happen to know what they are but I bet you at least two of my colleagues don't have a clue and most of the people in the public won't have a clue of away they are. So what we are looking for is a motion to accept and to place it on the work plan going forward.

>> Councilmember Nguyen: Motion to accept the report and to put it on the work plan moving forward.

>> Councilmember Oliverio: Second.

>> Councilmember Constant: All in favor. Any opposition? Thank you, thanks Mike. That brings us to our very last item with our featured guest, David Wall.

>> David Wall: This is an unfortunate incident, that involves the office of City Manager. And the environmental services department. Sometime ago at Rules Committee I spoke of a situation at environmental services where a deputy director was hiring a friends for a program manager position. Unbeknowns to me and unsolicited, a senior attorney -- or excuse me -- a senior engineer for ESD also spoke on that very same issue. We now have two

inspector positions opening up, that have opened up as a function of employee retirements. They're opened up to the general public. Which is neither here nor there. The bigger issue here is that all new hires that aren't within a specific specialty should be closed to the public, because there are certain city employees that could fit these positions. Often, you will hear in your council tenure from the office of City Manager that the minimum qualifications are such for X number of positions. These, and this type of philosophy can be truthful, depending who's telling you. But for the most part, they are a lie. Now, these inspector positions, for example, will have grandiose qualifications. But years ago, these minimum qualifications were waived to take just about anybody. Because they're really not needed. Plant mechanics became an inspector, code enforcement people became inspectors. Therefore, your code enforcement people could fit into these positions, you could save them.

>> Councilmember Constant: Good timing. That's it, thank you.