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>> Mayor Reed: Good morning. I'm going to call this meeting to order. First item on the agenda would be the orders of the day and I want to talk just a little bit about the agenda order. So people know what we're doing with this special meeting. We're going to start in closed session to discuss the labor items on the agenda. And then we'll be back in here, we're not going to talk about all the labor items on the agenda in closed session, we'll do some of that later. But we'll be back in open session and run it until approximately noon. We'll take a half hour break for lunch, back into open session to finish the agenda be items through 7.1, and then back into closed session to discuss the remaining contract negotiations with our police union. And that will take us to whatever time it takes us to. Little bit unpredictable, we'll have a special sequence and a special schedule to try to do that. That's what we're working around the holiday weekend. So on the orders of the day, any other changes from the printed agenda? Is there a motion on orders? Motion to approve orders of the day. All in favor, opposed, none opposed, those are approved. We'll adjourn into closed session and when we come back we'll have a closed session report as may be appropriate, then take up the consent calendar, report of the City Manager and then on to the labor items. So we'll be back probably in about half an hour is my guess.

[Closed session]

>> Mayor Reed: Good morning, we're going to start the open session of our meeting. We're not doing everything like a regular council meeting but we will have the pledge of allegiance, which is our next item, so please stand for the pledge. [pledge of allegiance]

>> Mayor Reed: First item of business ask closed session report. City Attorney.

>> City Attorney Doyle: Only to note that the council will reconvene in closed session after the open session.

>> Mayor Reed: Next item is the consent calendar. Any requests to pull items on the consent calendar? Councilmember Campos?

>> Councilmember Campos: Yes, wanted to pull off item hold on where is it?

>> Mayor Reed: 2.2.

>> Councilmember Campos: Yes,.

>> Mayor Reed: That is the local government mediation, AB 506, Wieckowski. Anybody want to pull the other one off? Motion to approve the one item on the consent calendar, all in favor, opposed, none opposed, that's approved. One no vote on Councilmember Constant on item 2.1. Item 2.2, AB 502 from Wieckowski. Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. If I could have staff give us a little bit more background on this, thank you.

>> Betsy Shotwell: Thank you, councilmember. Betsy Shotwell, Director of Intergovernmental Relations. This is an item that has been introduced for the third time, the council is on record opposing the two previous measures. This measure adds a layer in the state, should a local government decide it needs to file for

bankruptcy, approaching a group of impartial bankruptcy judges. I don't know if anyone from about financing is here for the machinations of the process but that's basically an overview.

>> Councilmember Campos: Okay, thank you. But I do have -- and the reason why I ask for it to be pulled off consent is because I mean, again, I -- I wasn't here for the other times that these were discussed and voted on. But I would think that something that would have this type of effect on city government should not be put on consent calendar and there should be some discussion on it. I am a little again confused as to the process of anything that comes from Sacramento that where we're holding a position you know, it seems like we pick and choose and obviously this is one that made it onto our calendar. And I'm just wondering, why doesn't everything come to council for us to take a position? I mean, there is one most recently that I know Councilmember Kalra, myself, Liccardo and Nguyen, had requested for council to take a position on regarding the payday lending, and you know, I think that's very important to our community. And, you know, we haven't seen it before us.

>> Betsy Shotwell: Thank you. The legislative priorities process which will start in the fall and go through the committees to the rules committee and to the council in December, that process helps set the stage for reviewing legislation in the next calendar year. Not to say that items can't be pulled, that not necessarily have been designated or earmarked a city priority previously. Certainly open to recommendations or reflections from the councilmembers during the legislative year. But we try to start the foundation with these legislative guiding principles in December, which of course you'll be a part of.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I just wondered what the likelihood was of passage.

>> Betsy Shotwell: Well, it did get out -- this bill did get out of appropriations on Friday and it has until this coming Friday to get out of the house of origin. As are all bills that are pending.

>> Councilmember Pyle: Looks like it's going to make it?

>> Betsy Shotwell: It's difficult to say what will transpire in the senate, which will be its next location. Which I can't predict.

>> Councilmember Pyle: No one can do that. Thank you.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Motion to approve the recommendation to oppose this terrible bill.

>> Mayor Reed: All right, we have a motion to follow the staff recommendation to take an opposed position. Councilmember Herrera.

>> Councilmember Herrera: Yeah I just want to be on record strongly opposing this bill and I think variations of this have been put forward in the past. And have been rejected. I don't know how far they made it in the legislative process but I think this is a very dangerous kind of bill, that unfortunately if the city had to take these steps, no one would ever have to do it, but it certainly ties the hands of local municipal officials from having to do the things that they need to do in the event of this kind of serious emergency. So I absolutely strongly oppose.

>> Mayor Reed: One of our core principles in our legislative agenda is this maintaining local control over our own affairs. This is just an effort by the state to take control over local decisions. Not that the state's such a good example of how to manage financial affairs but it is an issue of local control. Councilmember Kalra.

>> Councilmember Kalra: Thank you, mayor. And I think your last statement is, not many can argue with it, but I do think our current governor has taken some very serious steps to try to rectify what's happening in Sacramento or statewide. I agree with some of the concerns that Councilmember Campos raised, regarding this, and I do not have enough of an analysis done myself. I certainly don't support the legislation as written but at this point I have to remain neutral as opposed to taking an opposition position without further information.

>> Mayor Reed: We have staff's recommendation to being opposed, all in favor, opposed, two opposed, Kalra and Campos. Next, 3.1, report of the City Manager.

>> City Manager Figone: I have no report today mayor.

>> Mayor Reed: 3.2, terms of agreement with the association of building mechanical and electrical inspectors.

>> City Manager Figone: Mayor, I'm going to kick off the series of recommendations that are before you. So I'll take you through the first few slides. First as a reminder, for anyone who is watching as we do each week, information regarding the proposals that were exchanged e-exchanged with the employees will be on the Website. Setting the context of these recommendations and the importance of them. As you all know we are now facing the 10th year of a General Fund structural deficit and shortfall. The budget shortfall that we are working to close for 11-12 is approximately \$115 million. Unfortunately, as you know, at this stage in the process reductions in the services to the community and the workforce are difficult, but unavoidable. And very staggering number that I find very, very difficult to fathom, given that we still have challenges ahead of us, the proposals in front of you, if you take a look at the change between the adopted 10-11 budget and the proposed budget, we will be losing 600 positions, which is about 10% reduction in our current workforce. Bringing the number to 5,252. And this is very difficult to consider when you stay a look at what we're facing at least preliminarily, for 12-13, and that is another \$78 million shortfall. As you also know, I issued MBA number 2004 which gives the council your tier 2 reductions which will be needed on the nonsworn side, if we do not achieve the savings that we have counted on in the budget, and if they're not drawn upon for balancing this year's budget those very, very difficult reductions will be our starting point for 12-13. The chart in front of you shows what has happened to our workforce over the last ten years. It has shrunk by more than 2200 positions, that is about 30% and we will now be at employee levels that we were at in 1986. The next slide points out a major driver of our problem. It is very clear that the imbalance between cities, the city's revenue base and its cost structure has only become more pronounced in the recent years, the particularly part of the problem is our retirement costs which are estimated to increase to \$400 million by 15-16. As you know, last November, the city council approved direction to achieve a 10% ongoing total

compensation direction for all employees through labor negotiations, in addition, the city council direction included achieving reforms in the areas of retirement, our compensation structure, disability leave, supplement, vacation sell-back, sick leave and various contractual issues. I do recognize that a 10% total compensation reduction has a very significant impact for every employee, regardless of the position they hold in our city. In light of the city's fiscal situation, however, these concessions are necessary. Without them, as I already referenced, we will face even more devastating reductions in jobs and services to our community. Employee concessions, if achieved, as we've counted on them in our budget-balancing strategies, amount to \$39.6 million of the \$115 million budget shortfall. So you can see that achieving this goal is critical, even though it is not enough to solve the problem it is a very important part of the solution. And with that I will turn the presentation over to Gina Donnelly.

>> Good morning, mayor and city council, Gina Donnelly, director of employee regulations. Tentative agreement with ABMEI the building inspectors union. First I wanted to take a moment to acknowledge all the work of those who participated in the negotiations with ABMEI. The ABMEI team included Steve Bender, Mike Terwilliger, and Richard Hicks. In addition to myself on the city's team, employee relations member Allison Suggs as well as Joe Horwedel, the director of Planning, Building and Code Enforcement. I'd really like to take some time to thank those teams for their time and effort put forth that made this tentative agreement possible. ABMEI began bargaining as part of the coalition but withdrew prior to the agreement that was reached with them in early April. We continued to negotiate separately and reached a tentative agreement with the assistance of a mediator on April 29th. This agreement includes a two year term so it expires June 30th, 2013. For fiscal year 10-11 ABMEI's base pay was reduced by 4.65% along with the changes to health care cost sharing and plan design which equated to a 5% ongoing compensation reduction. This tentative agreement includes an additional base pay reduction of 5.45% which, together with last year's ongoing reductions, achieved a 10% ongoing total compensation reduction. A very significant aspect of this agreement: ABMEI is one of the first to agree to reduce the salary substructure. Reduction from 5% to 2.5% between each step. ABMEI has agreed to eliminate disability leave supplement in the second year of this agreement which is the same manner in which AEA, CAMP, and AMSP have also agreed to do. And one of the most important aspects of a two-year agreement is the ability to continue to negotiate over retirement benefits for future and current employees, as well as sick leave

payout. Now, this entire tentative agreement has been available online since the end of April. And we are recommending that you approve the tentative agreement between the city and ABMEI.

>> Mayor Reed: We have a motion to approve the agreement. I have no cards on item 3.2. If anybody wanted to speak on it, now would be the time. All right, so before we vote, let me just explain how we'll move through the agenda. Maybe I wasn't clear. We have the agreement with ABMEI and then we have also an agreement with ALP. So we'll take those two first, and then we'll take the other four items together, so people can take whatever they want to talk about. Okay, on this motion, motion to approve the tentative agreement. All in favor, opposed, one opposed, Liccardo so that passes on a 9-one vote, I'm sorry, 10-one vote. So that item is approved taking us then, I want to take up ALP, which is item 3.5. Again, that is the proposed agreement, tentative agreement having been approved by the membership. City Manager taking that or is Gina?

>> City Manager Figone: No I'll have staff take you through each one of the agreements.

>> Again I'd like to start off by acknowledging the participants in the negotiations with ALP. This association of legal professionals negotiating team we had William Clark, Vera Todorov and Brian Doyle and Barbara Jordan. And the city's team included myself, employee relations staff members Marco Mercado and Charles Sakai. The persistence and commitment of both teams allowed us to reach the tentative agreement. And through the continued assistance of a mediator we did reach a tentative agreement on Friday, May 27th which was ratified by the membership on the same day. This is a one-year term included this this agreement. ALP's agreement for fiscal year 10-11, included 4.75% as well as the health care cost sharing and design changes. This agreement includes a 5.39% base pay reduction which, together with last year's ongoing reductions, achieves the 10% total compensation reduction. Similar to the agreement with AEA, CAMP and AMSP, ALP's tentative agreement reduces the disability leave supplement from down to three months, and reduces vacation sell-back by 50% for fiscal year 11-12 and again a very critical component of this tentative agreement is the ability to continue negotiation over retirement and sick leave payout. And we are recommending that you approve this tentative agreement between the city and ALP.

>> Mayor Reed: We have a motion to approve, again I have no cards, if anybody wanted to speak on this? All right. On the motion, all in favor? Opposed? One opposed, Liccardo. And it is approved on a 10-1 -- I'm sorry, I hear a voice.

>> Councilmember Oliverio: Mayor, I just hit the light. I just want to thank the association of legal professionals for being the first union to ten is up and doing their negotiations in public. I very much admire and enjoyed hearing their viewpoint unfiltered, directly, and I really appreciate that very much from all the folks representing ALP. Thank you.

>> Mayor Reed: Motion done passed. Okay. On the next to we have one two three four items, left. Staff will have additional presentation on these items individually or collectively. However wish to do it. And then we will take testimony on all of them at once.

>> As the mayor said, the remaining four items that we will present to you now are related to the negotiations with the international brother hood of electrical workers, international union of operating engineers, municipal employees federation and the confidential employees organization. Just to provide you with a brief summary of these negotiation, we did begin these negotiation earlier than customary, in January and early February. We started earlier than usual because of the volume and complexity of the issues that we would be addressing in these negotiations. After several months of negotiations including mediation, last best and final offers were issued in early May. And now we did present each bargaining unit with two alternate last best and final offers with different terms and elements in each. This chart up here on the slide shows the elements that were contained in each of those offers. After these offers were issued, we did request that we receive notification back from the bargaining units by May 24th. IBEW first, after contacting us for clarification on some aspects of the offers we did receive notification that the membership had rejected both last best and final offers. OE3 was a little bit different. In May we did reach a mediated tentative agreement on May 18th which unfortunately was voted down by the membership on May 24th. During mediation we had explicitly acknowledged that if a tentative agreement did not ratify we would revert back to the city's last best and final offers. MEF and CEO were issued last best and final offers on May 12th and although we did ask to hear back by the 24th no response has been received on

either offer. And this chart is a summary of the 10% ongoing total compensation reduction and the additional reforms included in the one year last best and final offer the entire last best and final offer has been available online since early May. And we just wanted to ensure that we were very clear about the implementation of terms in last best and final offer does not create a contract. It does establish a new status quo so we are moving forwards with any terms that are implemented. This does not end bargaining, however. Bargaining can resume upon request by either party at any time, and resumed bargaining could lead to a contract having an actual contract in place either a single year or multiyear contract and any changes could modify the new status quo. And we are recommending that you approve imposition of the terms contained in the one-year last, best and final offer, however it is important to note that this does not include imposition of side letters. Side letters would only be necessary to continue bargaining in a voluntary agreement of a new contract. The absence of a new waiver of the right to bargain allows for continued bargaining over all mandatory subjects.

>> Mayor Reed: I'd like to take the public testimony now. These cards are grouped sort of in order of the agenda but people are welcome to speak on one or all of these. So please come on down when I call your name. Dan Rodriguez. Bob Brownstein, Ben Field.

>> Good morning, Mr. Mayor, members of the city council, my name is Dan Rodriguez. I'm a business representative for the IBEW and a member of the negotiating team. I urge the council to vote no on imposing these terms to the electricians or any other bargaining units. By imposing the city is telling its employees of never having any intention of bargaining in good faith. Most of these conditions that the city is planning to impose have already been agreed to by most of the members of the negotiating teams. The added terms and conditions in fact are harsher than what was agreed to in negotiations and harsher than the offers made to the maintenance workers or the inspector or ALP. I think it would be difficult for anyone in the council to explain the major difference between the last offer made by the electricians and imposition terms that they are planning to agree on. Did anyone in the council even read the proposal by the electricians or any other bargaining unit or the two-year offer by the city? One of the things that the city asked for in the one year last best offer is a change in overtime language. If this change is so critical to have now why aren't they asking for it in the two-year last best offer, and why aren't they asking it from anyone else? Now you could -- why can you now approve the ALP side

letter language but everyone else language has to be the city language. Doesn't make any sense. You have inspectors contract in your hand, look at the overtime language. It's the same language that you don't want the electricians to have. Why are you willing to accept their overtime language and not the same language in the electricians contract. If the city chooses to impose these regressive terms today it opens itself to another lawsuit. I urge the council to read two-year offers from the electricians and from the city compare these offers to the City's one year last best offer and decide if this is in the West interest of the City of San José. The employees of the City of San José can no longer sit back and let the politicians running the city destroy the working environment that has taken place, has developed over the year to open communication and cooperation with the employees. Before you vote to implement this contract or any others look at the long term ramifications to the city. If you look hard enough you will see this will not be a good offer for the city or its citizens. Thank you for your time.

>> Mayor Reed: Bob Brownstein, Ben Field and John Freesman.

>> Mayor Reed and members of the council. Over many decades, too many decades I have observed labor management negotiation in the public sector and I can fairly well conclude that if both sides want a contract and both sides negotiate in good faith, you almost invariably get a contract. So let's take a look at that time IBW negotiations. IBW agreed to 10% pay cut. IBEW agreed to the significant changes in the health plan. IBEW made no proposals asking for anything in addition to its previous contract. It asked for nothing from the city. Based on those facts it is impossible to suggest that IBEW didn't want a contract or the didn't negotiate in good faith. So where is the problem in this case? The problem is with the City of San José. In the case of MEF, in several of the areas of negotiations, MEF proposed counter proposals that are better for the city than the City's original proposals. MEF suggested that the changes in disability leave should not apply to people who are already on disability leave, which offers the city an opportunity to show that it doesn't want to throw people who are disabled off of leave, to save virtually nothing. And MEF suggested that on paid time off in the calculation of overtime, you should not consider involuntary paid time off, that is sickness, because to do so would create a situation in which people who come back from illnesses will be targeted for overtime. Which makes no sense in terms of performance or for the well-being of the workforce and generates no savings for the city. Neither of those

proposals were TAed by the city. Again, suggesting that either there is no interest in can achieving contract results which are in the benefit of the workforce, the city and the public, or simply a desire to not have a negotiated contract from the get-go. Thank you.

>> Mayor Reed: Ben Field [applause]

>> Mayor Reed: Followed by John Freesman and John Max Reger.

>> Mr. Mayor, and members of the council, my name is Ben Field, I work for the South Bay Labor Council. In the Orwellian world of San José where one of the safest cities in the countries has a public safety state of emergency, words do not have their ordinary meaning. Ordinarily the words from one of the mayor's proposed ballot measures, quote, council is prohibited from making or approving any contract to increase compensation for any bargaining group, end quote, would mean the end of collective bargaining. What is left to collectively bargain if employee compensation is off the table? But in orwellian San José, we're to the the ballot means something else. Ordinarily, the word bargaining means, negotiation that move toward agreement. But in orwellian San José, bargaining occurs even when the city's first offer is substantially the same as its last. And the union's offers are ignored. Negotiations have become little more than an opportunity for the city to present its ultimatums to the unions. A vote to impose working conditions is the culmination of a process designed to undermine the right to collectively bargain. The city does not -- the City's budget crisis does not require imposition. The unions unions before you today have all agreed to at least 10% reductions in their base salaries. An imposition today would further demonstrate the city's commitment to undermining collective bargaining and the unions themselves. Imposition have little to do with money and a lot to do with power. Thank you.

>> Mayor Reed: John Freesman followed by John Max Reger and Bill Pope.

>> Good morning, my name is John freesman, I'm the pastor for the holy redeemer Lutheran Church on the Alameda. In my congregation we have a guideline that is just because you can do something doesn't mean that you should. Congregation so that those who have power or seem to have power or the leadership of the

congregation cannot impose on the congregation something that is not for the whole good. Everyone here is concerned about our city. That is not debatable. The question is not whether or not we're concerned. The question is, what is the best way to solve the problems which we have? And I assure you, imposition is not the best way. Imposing working conditions will not solve the budget problems that beleaguer our city, regardless of what some might say. The unions targeted here have already agreed to the City's terms of in every substantial economic issue. At the present time, there is no economic issue that's really under dispute. And to this action, to the budget woes, it's nothing more than a political red herring. What imposing working conditions will do is, hamper future negotiations. It will really end collective bargaining as we know it. It will turn our city into Wisconsin West. It will not move us forward, as we attempt to end the problems that we face. It will not bring an end to the budget shortfalls. It will not be a positive move for our city, nor will it make our future brighter. Just because you can do something doesn't mean that you should. It seems very apropos in this situation, and I would urge you strongly to heed it. Thank you.

>> Mayor Reed: John Max Reger. [applause]

>> Mayor Reed: Followed by Bill Pope and Yolanda Cruz.

>> Good morning, honorable mayor, honorable members of the council, madam City Manager members of staff. I would encourage you not to impose this contract. I know I've spoken to you a few times about the enterprise funding on our folks. Our folks, they're on the low end of the economic scale. About \$61,000 a year. It's not a lot of money living here. And it's going to be very onerous for our members with imposition with the 85-15 health care changes. I think these things can be solved and I did mention to you last time about the process of informing our members and the voting processes, effectively one day to get the message out. I would encourage you not to impose on it. Try to work with us. There's always time to communicate. Imposing and ultimatums, I don't really think that's beneficial for the city. Thank you for your time.

>> Mayor Reed: Bill Pope, Yolanda Cruz and then Paul Prange.

>> Good morning mayor and city councilmembers. I'm Bill Pope. I'm the business representative for operating engineers local 3. I'm going to have a short comment, and as a retired city employee and being in the process for a lot of years I have seen this process get worse and worse and worse. This was a predetermined outcome, and my members were telling me this is what they're going to do. And insanity is trying to do the same thing and get a different result and still bang your head. But I will say this: That I agree with everything that's been said. But OE3 is no longer going to beg. Thank you.

>> Mayor Reed: Yolanda Cruz. Paul Prang and Jerry Chimue.

>> In an effort to get through my speech I have two other people coming up behind me. My name is Yolanda Cruz, I am the president of AFSCME local 101 and MEF chapter. I am also a member of the negotiating team. I'm a former resident of District 8 for 25 years, a district 9 member for seven years, and a 25-year city employee with the library department. Here long before any of you were here and will be here long after you all leave. I stand here today because AFSCME negotiating team is very frustrated with the city management. My comments are not without significant concern for having to speak out against the City Manager and her negotiating team. It is never I repeat never a good thing for rank and file workers to have such little faith in the leadership of this city. I can assure you that as a leader in the AFSCME union for the past four years it has been very challenging for everyone with the current economic downturn in our nation. AFSCME has stepped up in many ways over the course of the last four years that has helped the city balance its shortfalls. We contributed and endorsed the 911 tax that was put on the ballot by the mayor and then council, we were the only union with a contract that agreed to true zero requests last year that you Mayor Reed asked all bargaining units to take. Even last year we attempted to assist the city with the challenges that it faced. To no avail. We have never been unwilling to work with the city to address budget shortfalls or to work on alternative solutions including being the only union to stay engaged in the beyond budget custody committees that the City Manager promoted. [applause]

>> My name is Paul Prang a long time resident of district 3 and a member of AFSCME 15 years of experience with the city. We've endorsed and supported many of you councilmembers in your election for office. We support candidates who support working families in San José. AFSCME members have the largest percentage of city

residents who are also city employees. Over 70% of our members live in this great city. Unfortunately, all our commitments and sacrifices to be true partners with the city have coming down to a single vote, this single vote you will make today. Imposition of terms and conditions for our union is not the way we as a city -- city employees, residents and partners should be treated. If surface bargaining tactics the City Manager and her team have elected to use in this negotiation cycle is not only unfair but down right wrong. We came to the table two months earlier than required to do so and agreed to jointly bargain with our sister union CEO. We made every attempt to reach an agreement with the city. Instead the picture that has been painted of our AFSCME union has been one of defiance and unwillingness to work with the city. This is completely untrue. And has been the most frustrating for me personally and for our bargaining team. Last week many of you stated on the record that you support collective bargaining and that you believe that your vote last week to support the City Manager's plan to address retirement and other issues did not jeopardize the collective bargaining process. Let me assure you that a vote to support the imposition of terms and conditions especially because of the hard bargaining tactics the city has engaged in does challenge this. And very quickly on a personal note I manage a program that supports low income energy efficiency within the City of San José. Most of the members of this union before we -- before you would impose this cut qualify for that program. We are not a well paid union. Thank you.

>> Mayor Reed: Jerry Chipue, followed by LaVerne Washington and Mike Enderby.

>> I'm Jerry Chipue, I'm a city resident of District 8 and a ten-year city employee. MEF and CEO we offered a permanent 10% reduction in base pay, the 2% salary increase roll back, 2.5% salary step change, health plan change design changes and sick leave payout formula. These give-backs are not without a significant impact and sacrifice to our members. Some of the lowest paid workers in the city. We represent almost 3,000 front line workers in this city. Approximately half of them are not benefited workers and about 47% of them are not General Funded positions. I ask for your support now to vote no on the City Manager's recommendation to impose terms and conditions on our union and instead direct the city team to return to the bargaining table with AFSCME and engage in real negotiations to reach a tentative agreement that will do a lot more to maintain a working and viable labor relationship with AFSCME. We have a lot of room to bargain and the mediator offered to come back and work with us. Thank you.

>> Mayor Reed: LaVerne Washington, Mike enderbe and then Sherry good.

>> Good morning, mayor and city council. My name is LaVerne Washington, CEO president. The AFSCME contract team worked long hours to come up with viable, creative and cost control measures that met the city's need for wage and benefit concessions to balance the budget and if any of these proposals were not acceptable or changes needed to be made, AFSCME was and is ready and willing and able to meet to continue to meet with the city to negotiate a contract that met all of the parties needs as was the state mediator. It is unfortunate that creativity and thinking outside the box to ensure employees received a fair and equitable contractual while meeting the needs of the city for real budget solutions was not valued or wanted by city negotiators. It was as if when AFSCME was asked for 50 cents, instead of accepting an offer of five dimes, the city wanted only two quarters, and nothing else. This is not negotiation. This is not working collaboratively. These negotiation were not conducted by the city in the spiritual of working together to find real solutions to the budget. And obtain fair and equitable compensation and working conditions for the dedicated and hardworking employees of this city. The city conducted heavy handed and sham negotiations, in an effort to meet the requirements of collective bargaining. These so-called negotiation appeared to be a mere effort to impose and not solve the City's budget approximate. The city can be rightly and unjustly accused of bargaining to position and unfortunately it is not just AFSCME, it is also IBEW and OE3. And until last week it also included ALP. We are your rank and file employees. We are not management. We are the ones who provide direct services to the city's residents visitors and businesses. The city has paid much lip service to the proposition that it want to work together to develop pension and retirement reforms to ensure long term sustainability and provide solutions to the City's budget shortfalls. But the outcome of the vote today is the true test of the City's motive. Contract imposition is a litmus test for the City Council, a vote to impose terms and conditions on rank and file employees is the clear indication that this city council is not committed to working cooperatively and in good faith with its employees to settle issues that are in the best interests of this city. A vote against imposition will indicate a true desire to work collaboratively with employees to achieve fair and just contracts with compensations benefits and working conditions as well as pension and retirement reform. Rather than voting to impose I am imploring you the city council to direct OER staff to return to the bargaining table and with all of the bargaining units who have unresolved contracts and

engage in good faith true and fair negotiations on both economic and noneconomic issues. The decision regarding the direction of labor --

>> Mayor Reed: Sorry your time is up. Mike enderby and then Sherry good.

>> Good morning, my name is Mike enderby, I'm a long term district 9 resident and an employee in the planning division. I highly encourage you not to impose the MEF contract. Two years ago we gave up a percent and a half when the city needed our help. To show your appreciation and a true spirit of cooperation this should be taken into consideration now. A 12% pay cut which is being asked for now is too much. Also I'd planned to retire in less than two years. Please don't put the rug out from under me at the 11th hour by taking away all the sick time payout that I've worked hard to accrue. I think a fair approach would be to limit sick time, payouts of accrual earned after today. Additionally, you know, look towards doing payouts over time, rather than taking the unilateral approach to elimination of a vested right. Thank you.

>> Mayor Reed: Sherry good.

>> My name is Sherry good and I'm a 25-year employee with AFSCME. The biggest problem this city faces is the, quote, leadership. True leaders bring people together. Here half truths are abundant and the city wastes valuable money on surveys that are so slanted they are laughable. All we hear about is the escalation in pension costs. We don't hear about the high debt the city has or how priorities play a role in the deficit. We only hear how the employees have caused this problem. The arrogance of the quote leaders to think there is only one solution in reaching the 10% compensation reduction is mind boggling. AFSCME had every intention of meeting the reductions the city asked for but we were not given the opportunity to work through the details and heaven forbid we actually got these back from staff. Furthermore your offers did not include the roll back of the 2%. It added it to the 10%. The city staff did what you asked when they came to the table. They pushed your package across the table and were done. There was absolutely no negotiations. Discussions about no-cost items such as safety language was ignored. Mediation ended after less than eight hours. You should be ashamed of your leadership. You have turned an employer of choice into the choice of last resort. [applause]

>> Mayor Reed: That concludes the public testimony on these items. I think City Manager has some comments before we bring it back for council discussion.

>> City Manager Figone: Thank you, mayor. In closing, the staff's comments, I just wanted to reinforce a few things. First of all, the council's direction to your negotiators to the City Manager has been clear since November. I really do believe there's been ample time for everyone to work through the process. And I think a very strong indication of that is we have reached agreement with six bargaining units who are shown on the slide, as well as of course, unrepresented management. And this is a very, very difficult step, I recognize that. It certainly wasn't our goal going in. However, we are out of time. And we need to move forward. So our recommendation is to proceed with the implementation of terms.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. I would like to make a motion to implement the terms of agreement contained in the City's last best and final offers to IBEW, OE3 MEF and CEO. And then I have a few comments.

>> Mayor Reed: All right, we have a motion on the floor. Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. I just wanted to make some comments on the process that we have gone through. There has been a lot of accusations flying back and forth throughout e-mails and phone calls and phone banking and protests and all those other issues that have been happening in the last couple of weeks. But I just wanted to reemphasize some of the points that were made in the presentations. One is, that we have been at this for quite a long time. We started in January and February, with our bargaining units, there's been ongoing discussions throughout that entire time, with the unions, we went through the full impasse procedures which included mediation, and the presentation of last, best and final offers. As is pointed out by the chart that is projected right now, we have received, based on this process that we've had, we have achieved

agreements with local 230, ASMP, CAMP, AEA, ABMEI, ALP and unit 99 employees so there has been significant process made. Given the situation that the city sees ourselves in in the 10th year of deficits, significant deficits, which every year we seem to think we've seen the worst of it yet the worst is yet to come, we have seen reductions throughout our city and throughout our workforce and we are now at a point where there is very little else that we can do. We have just a short number of days before our budget is due to be finalized and approved. And we have to face the realization that business as up in the City of San José is not going to be as usual anymore. There's -- it's not going to be the same state of normal. We know that for a number of years, we still have projected budget deficits in our future. In fact, the last number I saw, I believe, showed that we will have a deficit already, that is projected for next fiscal year, the one that starts a year from this July 1st, that will be in excess of \$78 million. So while this is a hard decision for many people to come to, I think we have no other choice than to make this decision because we still have a city to operate. We still have nearly 1 million residents of this city plus business owners and visitors that come to our city that not only deserve the services that we provide, but quite frankly, pay a significant amount of money through taxes, fees and other things, to receive those services. When I looked at the City's budget document this year, it was -- I don't want to say starting because I knew it was coming but it was definitely a dose of reality to see how significant the impacts of our budget deficit was actually going to be on the services to the residents and businesses of San José. What was even more disturbing was looking at the delineation of what would be our choices that we would have to make if we went to tier 2 reductions which if we do not approve this motion at this time, today, we will be standing right on the door of making those hard decisions of what we are going to do to resolve the remaining deficit. And the tier 2 reductions are not only distasteful, they're just hard to discuss. I mean they're so significant on the impact that they will have to the City of San José. I do want to commend our negotiating teams. The last five months I know have been very difficult on both sides. The teams that represent our unions and the teams, the various teams that represent the City Manager and the council, in negotiations. I know it's been dozens of hours. Hundreds of hours. And I know it takes a lot of work. But I believe that the action that we're taking today, or that I hope we take today, is truly not only the culmination of those efforts but really, is what's envisioned in the Meyers Milius Brown Act that sets out a clear set of direction so that we know how we proceed through negotiations, through impasse and into implementation. And I think that it is clear when you read that act that we do need to take this action, so that we can approve our budget in just a few short days, so that we can meet our obligations to the residents and

businesses of San José. So I do ask that all of my colleagues support me in this motion. I know that the residents and the businesses in the City of San José are counting on us to make this difficult decision today. Thank you.

>> Mayor Reed: My number 1 concern at this moment are really the two to 300 people whose jobs hang in the balance. The items in front of us mean people will either keep their jobs, for another year, or they won't. Because you've seen the work around how the second tier as Councilmember Constant has referred to it and the manager's memo is out with some of the details of what will happen if we can't get these reductions. And we're talking about another two to 300 people that will get laid off. My message to the council and the public, the June budget message is due out on Friday. I do not want to have to put in that budget message another two to 300 layoffs. That really is the choice today, do we proceed with laying people off or do we vote to impose these terms which will carry us into the next fiscal year, and allow us to put the budget together, get it done, and not have to lay people off. So I'm very much interested in not laying people off, even though the base budget that we're looking at does, in fact, have to lay some people off. But there are two, 300 other people who won't have to be laid off if we approve these items so I'm supporting the motion urging my colleagues to support the motion as well. Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor. Alex, some questions were raised and I appreciate the -- the members of the public and employees who came to the microphone to express their views. We all recognize this is a terrible, terrible time and it's particularly painful for our city workforce. And so I do appreciate those who have been coming to the table and working hard to try to reach an agreement. But specifically, Alex there were concerns raised by members of the IBEW about -- I think essentially the assertion was, any distinctions were without a difference between the electricians' best offer and the City's last best final offer. And in the context of the council's goals to minimize layoffs and preserve services, and obviously achieve the necessary savings to do that what were the relevant differences?

>> Alex Gurza: Councilmember Liccardo, obviously if it could have met the council's direction, we could have accepted it, we would have. I think the slide that's shown now demonstrates the efforts between the city and the bargaining teams to actually negotiate an agreement. That is clearly our goal and that's what we were able to do

with six of the city's 11 bargaining units. Now with the others including IBEW, there were clearly areas of agreement. But there were still things that kept us -- kept us apart. Now we did participate in mediation. Mediation is a confidential, private situation so we can't disclose the conversations there but you can compare the offers that were last proposed publicly.

>> Councilmember Liccardo: Right.

>> Alex Gurza: And I've turned it over to Aracely Rodriguez to point out the key issues of agreement.

>> Good morning, mayor and council, Aracely Rodriguez, office of employee relations. The last package proposal they gave us --

>> Mayor Reed: Excuse me, Aracely, could you tilt the microphone? It's cutting out a little bit, I don't know why.

>> So the package proposal that they last proposed did not include any changes in disability supplement, the side letters did not include the language, it was simply to meet and discuss, not meet and confer on the various items that we needed such as sick leave payout and retirement. It also did not include any changes to the overtime eligibility or the step structure.

>> Councilmember Liccardo: Okay, and so obviously all those issues relating to disability pay, the retirement structure reforms and so forth are all issues we need to discuss before the next fiscal year so we can be able to get agreements and move forward, is that fair?

>> That is correct.

>> Councilmember Liccardo: Okay.

>> Alex Gurza: And if I could add, one of the things we spent a lot of time on with the bargaining units that you see here is the language of the ability to continue to negotiate some of the key issues of retirement reform. Clearly the council did not want to enter especially two year contracts without having very clear language that we could negotiate those items. We tried to add language to some of them that would address some of the concerns we heard from the bargaining units but as Aracely just mentioned IBEW in some of the language said that they would agree to meet and discuss the item, not meet and confer. There is some significant differences there, and again, that was one of the issues, but as you mentioned, you have to take the package as a whole and compare where there was significant areas of continued disagreement.

>> Councilmember Liccardo: Okay, along the same lines, again representatives from MEF also came forward, AFSCME. Could you just describe or summarize very briefly the relevant distinctions between what they presented and what we needed?

>> Alex Gurza: Again I will turn it over to Gina Donnelly but I want to again say what we are going to say publicly has to be with the last public proposal since we according to the mediation process we cannot publicly discuss anything that was presented in mediation. So if anybody hears, well, wait a minute, that was different because we are not allowed to or discuss mediation proposals. So from the last on the record proposal Gina can mention at least some. It would take quite a while to go the all of the items. Key areas of difference.

>> Councilmember Liccardo: Perhaps one or two.

>> There were key areas we mentioned in reaching the 10% total compensation reduction. One was base pay, the other was health care cost sharing and plan design. In our last proposal in negotiations from MEF and CEO we were not able to reach agreement or get to the same place we wanted to be in terms of the cost sharing as well as the plan design for health care. In addition to that, the direction that we received from council was to look at that time rolling-back any general wage increases that were received in fiscal year 10-11. We were not able to achieve that in the last negotiate or last proposal received in negotiation with MEF and CEO.

>> Councilmember Liccardo: That was the 2% pay increase.

>> Correct.

>> Councilmember Liccardo: Thank you, Gina. And finally, I know there were some concerns or allegations raised around service bargaining. I know that we had with six agreements I believe all or most of those contained me too clauses. I'm not sure if every one of them did but most did is that right? Alex?

>> Alex Gurza: Councilmember Liccardo, not all of them did. The groups that were negotiating in coalition had a specific me, too language which would be the association of maintenance supervisory personnel, the association of engineering and architects and the city association of management personnel.

>> Councilmember Liccardo: Okay, those me too clauses constrain our ability to vary terms significantly from one negotiation to another within the among the various bargaining groups unless we want to reopen other negotiations that have been closed or settled. And could you just explain why me too clauses are important in successory bargaining environments like this one where we're cutting and cutting and cutting?

>> Alex Gurza: One of the things the city has said is that it wanted all employees represented and not to share in the sacrifice to help the City's fiscal situation. In a concession environment as the City Manager indicated asking any employee at any level to give up 10% of their pay is a significant step. Me too clauses, it was something we negotiated at the request of those groups, was essentially to contractually say that the city meant what it said. Which was that it's going to instead of saying I'm going to give the 10%, and turn around and say, well we really only want 5, was a way to verify, that the city really did need that 10% given the severity of the City's fiscal situation. If we were to say in later bargaining we only really need 5%, let's say miraculously, the City's budget situation improved dramatically, we would go back to those bargaining units and be able to restore what were the concessions that they had made. But it didn't I want to point out however it did not preclude us from reaching negotiated agreements with others. After that group we successfully negotiated agreements with the building inspectors and Ms. Donnelly did with the association of legal professionals that still met within the same general

parameter. If you look at it the agreements are not all exactly the same. The key was to say that we are really asking that sacrifice of the 10% and other things, the reduction of disability supplement from all employees.

>> Councilmember Liccardo: It does ensure and again I agree it doesn't inhibit our ability to make agreements that vary in terms but it does obviously constrain us from cutting a better deal with one bargaining unit than what we agreed to with someone else. Essentially it helps us build trust with one bargaining unit that they agree we are not going to go around them and undermine that deal with another bargaining unit.

>> Alex Gurza: Exactly.

>> Councilmember Liccardo: Thank you.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Thank you, mayor. Alex, can you -- I just want to make sure we understand what imposition is and what it isn't, what we're looking at in terms of our decision, is imposing terms and conditions. But not imposing a contract. Can you talk about that a little?

>> Alex Gurza: Yes, that is correct. If I could just take a moment and go to the slide here. Okay. As was discussed before, the Meyers Milius Brown Act which is the state law that governs collective bargaining in local agencies such as ourselves has specific provisions in it that talk about the imposition of terms. In the law in the government code. What an employer can do, after bargaining and after any impasse procedures, and the city's impasse procedures is mediation, is to implement the terms of the last best final offer, but not a contract. So that's what we say here. Cannot impose a contract with a term like you can't impose a two-year term. You can simply impose the elements that are contained in the last best final offer. And another important point that we made earlier, it does not end bargaining. It is not an end to the bargaining process. It does establish a new status quo and bargaining can resume again based on any changed circumstances by either the city or a bargaining unit starting tomorrow.

>> Councilmember Herrera: Tomorrow basically.

>> Alex Gurza: Starting tomorrow or any day and hopefully can lead to a contract which is really the ultimate goal is to be able to reach a contract and that can begin tomorrow.

>> Councilmember Herrera: So that means some of the items that would be included in these terms and conditions, some of those items could change, if for example, there was the vote was to impose and then tomorrow, one of the bargaining units who -- if they were imposed upon they could start negotiations and one of those items could be changed.

>> Alex Gurza: Yes, exactly. We heard one of the speakers talk about sick leave payouts and the fact composition of terms it would be eliminated as of January 1st. Nothing precludes a bargaining units from contacting us and say we want to see if we can reach an agreement different than that and it could again if an agreement was reached per council approval could be brought back that would modify that or any of the terms if the council implements today.

>> Councilmember Herrera: And so some of the other bargaining units where we reached agreements, the sick leave was -- was maybe different than what's being imposed today.

>> Alex Gurza: Well the difference there, is in fact all of the others that were shown in the other slide, we have the ability to negotiate that item. And as part of the -- as the City Manager's fiscal reform plan that was approved by council it includes elimination of sick leave payout. So we would be starting negotiations with those, working towards implementing the council direction or something different if that happens. So the fact that these include some -- any item it doesn't preclude the ability to negotiate a change to that in the future.

>> Councilmember Herrera: Okay. That's -- I -- I certainly would -- would have hoped that we could have reached a negotiated settlement with all of the bargaining units. It's not -- it's not certainly anything that is you

know something we would look forward to or want to have happen that we would be faced now with imposing terms and conditions. But the one -- the one good thing about this is that people can resume bargaining, even after terms and conditions would be imposed. And there might be room for a better settlement for the bargaining unit if in fact they went back to the bargaining table after imposition. But I think really what it says to me is, we sort of ran out of time. If anything else, we're negotiating, we know we have this time limit on it, and we have to reach agreement, and move forward on closing -- on finalizing the budget. And so if we don't have some sort of deadlines on this thing then we really get into a situation where we can't -- we'd have to move into some other alternatives in terms of the budget and that would mean more layoffs.

>> Alex Gurza: Yes, Councilmember Herrera, just to mention that issue of time, as you pointed out it really is the council's adoption of the budget, is to knowing what you have, what you count on before you adopt the budget doesn't require additional layoffs or not -- that's really the time issue that you're facing is the adoption of the budget for next fiscal year.

>> Councilmember Herrera: And so I know last year we had a -- I think we had different deadlines last year. We weren't looking at the same kind of deadlines we had this year. We went through August I know we went through a lot of discussion and further meetings to come up with some solutions that looked out into August and this year we're trying to accomplish all this so that it can be enacted in July 1st, right?

>> Alex Gurza: Yes, councilmember, historically when we've either added city positions or reduced city positions the effective date has been August 1. So in that first we're there's only 11 months of savings for that position. Because of the severity of the city's fiscal situation, we have moved up the reduction of positions to happen at the end of June, beginning of July. Really to maximize the amount of savings, we're in that sort of level of situation, so that's why it's accelerated. In the past the layoffs didn't happen until August and so there really isn't that extra month that we had in the years past.

>> City Manager Figone: And councilmember if I could just add. With these four units alone, every pay period that slips is worth about \$1.1 million. And so the budget deadlines and the savings assumed are very, very real.

>> Councilmember Herrera: So time really is money when we're talking about this whole thing and jobs and services. So you know reluctantly, it's not my first option but I will be supporting this motion because I think it's important that we move forward, we preserve services and jobs. And I just appeal to the bargaining units that are here, that to get back to the table after this and try to come up with different agreements if that's what they want to do. But I think we need to move forward today.

>> Mayor Reed: Councilmember Kalra I'm sorry Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. So question to staff. Let's say imposition doesn't happen today, and the units go back to the bargaining table and they agree in the middle of June, layoff notices have gone out. Can layoff notices be pulled back?

>> Alex Gurza: Yes, the layoff notices Councilmember Campos that have already gone out are sort of in the tier 1 of the budget which are the ones, assuming we achieve the 10% with the exception of the POA which we talk about separately. The quest is, is that if we do not implement today, additionally layoff notices would have to go out as the City Manager indicated to account for the savings that would not have been achieved through the imposition on these four bargaining units.

>> City Manager Figone: And just to add to that, all effort would have to be turned to selecting the positions, developing the notices, you know evaluating seniority and bumping, those employees would not get 30 days' notice. I would venture to say they probably, best case get a day. I'm looking at Kay. But it would really be down to the very end, they would not have the notice that we would otherwise like.

>> Councilmember Campos: But we've been basing our budget next year on 10% total reduction. So going out, like I said, middle of June, everybody basically comes to an agreement, it's all based on that 10%, I mean it would make sense to me that those people that were getting layoff notices on Friday, that basically, we're assuming that 10% is going to happen. It does happen. I would think that those notices would get pulled back. Because if they

were -- if we -- if imposition happened today, and you didn't send out those extra layoff notices, and the same result happened in the middle of the month, I can't understand why -- why those same people would get laid off either way.

>> City Manager Figone: Well, perhaps I'm not answering your question. The main issue from an administrative perspective is, we have not identified the individuals with specificity to move on those layoff notices. So all efforts would have to be put in that direction and we would be in the process of identifying those individuals and issuing the notices probably within the next few weeks. I mean, Kay can go into those details but that's where we would have to put our energies.

>> Thank you. Let me just clarify. When we sent the notices out for tier 1 at the end of April, those were the reductions that we anticipated that we were going to have to make. And then we sent out letters to the police officers, because of not coming to agreement with POA. So there were an additional 156 layoff letters that were sent to police officers on the week of May 20th. Now, what -- if there -- what you're saying, Councilmember Campos, is if the bargaining units who have not agreed, make an agreement with the city that is ratified by the council, would we rescind the next tier of letters? Yes, we can rescind those letters because those will not be necessary if all of the savings are achieved through the agreements between the remaining bargaining units with the city. So we could rescind those next tier of letters which we haven't even started doing yet. Which is a monumental effort as the City Manager mentioned because it's somewhere in the magnitude of two to 300 positions. Those haven't been identified yet, in terms of what impact, which employees, which departments, and if there are seniority issues, they cross departments, too. I mean that is one of the reasons why it takes us so long to go over this very intricate process. For example, if we lay off additional clerical people and they are in a citywide class, we look first at the department to see if there's somebody lease senior. If not we go through a rigorous exercise of looking at the least senior person anywhere in the organization and then we've got the succession of bumping and all the cascading. So you're right, if the agreements are reached with the other bargaining units we can rescind those next tier of letters which I hope we won't have to go through that exercise in producing. So if there are any other questions I'd be happy to answer anything also about the layoff process.

>> Councilmember Campos: Thank you. I just think that I mean we've heard from speaker after speaker, not just today but in previous council meetings, that they know, and they want, and if most if not all of them, have put on the table 10% total compensation reductions. I think -- I mean I think that getting them back to the table is the right thing to do. I think that imposing is not just ruffling feathers for the next 30 days or 45 days but we are actually setting a bad precedent for decades to come to our city. I think it creates this reality of anybody that wants to come and work for our city in the future, that this is not a place that you want to build a career. And I think that we -- you know I keep hearing this, we have to compare ourselves to the private sector but we're not the private sector. This is a place where people like, you know, way back at the beginning of the last century, people were company people. They worked for an employer for their entire career and they took pride of what they did and they didn't hop around. They didn't do that in the private sector. Like I said, this is not the private sector. I'm just concerned that the quality of work and talent that will come to our city is going to be diminished. And that is something, as a resident of this city, that is something I don't want to live with. And that is something that I think that our residents want us to protect. I can't support an imposition today, I can't support an imposition because I think that is the wrong message to send. I think it's disrespectful and I think that we will have that sentiment with our employees who are human beings for a long time. And I just think that we're better than that. So I can't support the motion. Thank you. [applause]

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you. On the -- Alex you were talking about some of the terms of some of the bargaining units that we have not reached agreement with, and you indicated of the six have and they met council direction and that the ones we haven't come to agreement with had immediate council direction then ostensibly we could have agreement. And the council direction you are referring to is from when?

>> Alex Gurza: Councilmember Kalra I'm hesitating because the direction came in several pieces. You know, the actual 10% started a year ago. But the council then said part of it can be one time, part of it can be ongoing. Modified I believe in last November to say it should be ongoing. Then the council has added additional reforms to be achieved. It partially and it's been several months now but it seems like the list of issues to resolve

has gotten longer not shorter. So through some of the City Auditor's work, in trying to achieve some workers comp reform so you added trying to eliminate disability supplement, we've had the vacation sell back issue, that was -- off the top of my head I don't remember which council meeting that was discussed. You have the issue that's been around and for a long time, which is our sick leave payouts which are now estimated to be \$10 million a year. So it really is the culmination of direction that I can't point to one single meeting, that had been a variety -- but it's been outstanding for quite a while. Now part of what leads to differences in contracts, again negotiations are done with separate bargaining units and bargaining teams. So it doesn't mean that at the end of the day, each one is going to have the exact same words. You can actually for example track the differences between the first contract that was on that list with the San José firefighters to the last one that Ms. Donnelly negotiated with ALP. The words are not the same. The association teams say if you word it this way, that way, again it's a complex answer. Without going through each bargaining unit and giving it justice and pulling out proposals and comparing it one to one, I can't give you snippet answer --

>> Councilmember Kalra: I didn't want a specific because I think you had said that if they met council directions then we would have an agreement and that direction's changed. I mean certainly the most significant aspect of it was 10% ongoing from November. But there have been other elements as you indicated based on information we received or audit reports and so on. But the six have agreed, the six that have agreed to the general guidance of the council?

>> Alex Gurza: Well yes but the other point to remember. One of the most important parts about negotiating a contract is the term of a contract. So you're going to have, I'm sorry, find the one which has the six contracts. So you'll have the firefighters for example who started out with a two-year contract. You have the coalition that has -- some of them have two year contracts. And what may be contained or what the council may have directed and authorized us to do in a two-year may be different than a one-year. You know a term changes a lot of things. So again, you know, it's very difficult to answer your question without going through each particular one. So I did make that statement so it was not intended to be taken lightly in terms of what council direction actually is. Because it's going to vary, like I've mentioned. Management, nonmanagement, some management groups have some benefit like vacation sell back, others don't. One year versus two years, I could keep going.

>> Councilmember Kalra: OE3 became an agreement with their bargaining team but the membership voted it down.

>> Alex Gurza: Thank you for mentioning that. Again, we were quite believed after issuing last best final offers, through the help of a mediator, was able to reach a mediated tentative agreement with the operating engineers. So despite belief that we were just trying to get this to implementation we continued our efforts with OE3 their bargaining team and our bargaining team actually reached an agreement. Unfortunately, their membership voted it down.

>> Councilmember Kalra: And their membership voted on it the day before it was brought back to us and we were informed that it was voted down?

>> Alex Gurza: That's correct. When you get down to sort of this stage of the process each bargaining unit by the way, has their certain bylaws and requirements for noticing how long a period has. There are bargaining units, for example, last year we had a coalition of bargaining units that included OE3 that was able to ratify that agreement within a short of than 24 hour period. But again others have certain bylaws about how long they have to have ratification periods last.

>> Councilmember Kalra: Uh-huh. And IBEW you've mentioned a couple of different items, I think one was disability leave pay and overtime structure.

>> Alex Gurza: Yes, again, unless -- what I don't want to do Councilmember Kalra is answer any question and try to make it seem like I'm complete. So really unless I have my staff line up every agreement and go through line by line, I don't want to be able to answer a question that might not be complete in what the major issues are. It was clear that we were not -- there was still major issues that separated us from being able to reach agreement. Again but if I answer any question if I have my staff answer it again really we want the time to be able

to line up the offers that have been posted on the Internet and compare where it is that we were still apart from reaching an agreement.

>> Councilmember Kalra: That's my question, where was it that we were apart by IBEW?

>> Alex Gurza: Again, are you referring to IBEW at this point?

>> Councilmember Kalra: Yes, IBEW, all these figures you just went over of IBEW.

>> Alex Gurza: I think Ms. Rodriguez answered that for Councilmember Liccardo, but we can have her go back and answer that again, if you would like.

>> So they -- on April 21st they did give us a proposal, it did achieve the 10%. However, it did not include any changes or proposals to the disability leave supplement, the overtime calculation or the salary step structure. And the side letters they did provide a proposal on side letters. However, the language indicated that they would be willing to meet and discuss, not meet and confer over those items such as sick leave payout and retirement reform.

>> Councilmember Kalra: So side letters we can't impose on those anyway, so it's not like we're gaining that, that's just something we just have to continue negotiating on because they're general issues of negotiations.

>> However the one thing to keep in mind is this was a two-year proposal. So there is a difference, and you know, of -- we would want the side letters during a two-year agreement. First is imposition would be just imposition of terms for that fiscal year. The follow fiscal year.

>> Alex Gurza: Councilmember Kalra if you implement terms, the side letters that we were proposing are moot. For example, you have -- for example, with IBEW if you reach an agreement for a two year term, they have a zipper clause in their contract. So the city would be precluded for example, from negotiating retirement reform

unless there was specific language in the side letter that allowed us to do that. If you impose you don't need a side letter because there is no contract and either side can send a letter to the other requesting to bargain over anything that's there. I want to make that exceedingly clear. If you were going to sign on the dotted line on a two-year contract, as we had with the firefighters, the association of maintenance personnel, engineers and architects CAMP, and the building mechanical and electrical inspectors, those are two year contracts so we have very clear language of what the city can reopen that contract about. So that's going to be very clear, that's when it's important in that when you reach a contract if you want to be able to continue to negotiate. The council made very clear that you wanted to be able to continue to negotiate the very important issue of retirement reform.

>> Councilmember Kalra: You already went over MEF and CEO, the issues of cost sharing and health care design. In all the 10% plus 2% wasn't -- in your estimation or wasn't achieved?

>> That's correct. We were not able to -- we never received a proposal from MEF or CEO that achieved the 10% total compensation reduction. There were additional cost items in there as well as not being able to achieve the savings that we were looking for in health care. But in addition to that and I should have mentioned this earlier, I apologize, but certainly the issue of retirement reform is equally as important to the city and that is one area where we were unable to reach any type of agreement on continuing negotiations over retirement reform.

>> Councilmember Kalra: Well you know, in the -- one of the issues that was raised by this, this is not to any one of you in particular, Alex may not be able to answer, but in regards to the sick leave you know, and I understand the concept idea that yes, if you implement tomorrow they can come back in and we can change it but the reality is once it's done and we see it's going to save us X amount, X amount of dollars, the likelihood of us going back and then what would be appear -- what would appear as a benefit being given by improving what was implemented is highly unlikely. I mean we can say that it's going to happen but it's really not going to -- once the sick leave is eliminated it is going to be eliminated. And that's something that's being implemented on but other bargaining units agreed to phase it out in different ways or at least different time line or are they just agreeing to continue to talk about it?

>> Alex Gurza: For those groups that you see appear, the bargaining units all have side letters that would allow the city and the bargaining units to negotiate it and the city would make proposals. Again council has given us direction to eliminate it. That direction could change in the future.

>> Councilmember Kalra: And what else is being implemented upon that is subject at this point to side letters or continued discussion?

>> Alex Gurza: I believe, it's difficult to answer one question that applies to everybody there. The sick leave payout is the main one where we have a side letter on the others. I believe if we think of something else we'll come back and answer your question.

>> Councilmember Kalra: Okay. Yeah, I mean -- and I bring that up because yes, there are such agreements and yes I think all of us have heralded the fact that we were able to come to agreement, through your work, the work of the bargaining teams with the six bargaining units. But the agreements that were reached upon had they not been reached upon other items at least one at least sick leave payout may have been implemented upon the ones that we had ability to implement upon if they didn't come to an agreement and it's a pretty significant -- it's pretty significant to have on the one hand continued discussions on eventually phasing out sick leave versus it's going to be gone in six months particularly for those that have earned those hours. I worked for a county government for 11 years called in sick once, I never did it because I was trying to save up sick leave hours I did it because I was dedicated to what I was doing. I couldn't have come in sick and that speaks to the issue of whether sick leave should be voluntary or not because I don't believe it is. But I think that you do have employees that have dedicate id themselves that have earned those hours and because their bargaining unit couldn't come to an agreement, you're taking away all that they've earned is very troublesome to me. And you know, the City's budget document includes the 10% ongoing reduction in order to meet the service cuts as well as the service shall remain in place and to say without tier 2 if we don't get concessions again continues the sense this is not, I mean you've received direction so this is not spoken to you Alex but the sentiment that it is the employee's obligation to save the services versus the leadership. And as Councilmember Constant indicated when he was just talking about well, the residents and businesses expect and deserve service, absolutely, I agree with that. I don't think it's

mutually conclusive to say that and we should be respectful of in every way possible try to have as many harmony as possible with our employees. I think both of those need to be done. I think any organization whether it's a city or a corporation values and respects their employees because they're the ones that do deliver the service. So I'm extraordinarily interested in maintaining service to the residents and, you know, last year, we were at this same place. And it took a few days for the bargaining units to come back and finally come to agreement because they realized we were on the verge of implementation. Implementation really is and should be considered as a last last resort for any public agency or private agency for that matter as well if they really want to maintain not just harmony with the workforce but the high quality talent that's going to serve our residents and the talent and the service that our residents deserve. Particularly with a group like OE3 where yes, pain if they go back to the membership maybe it's not likely that they would ratify but on the verge of implementation go back to them, there may be that opportunity. And last year it was well worth going back as painful as it was it was well worth going back to allow the bargaining units to come to an agreement that we felt justified in accepting. I'd like to think that, although I don't know that it's necessarily functional I'd like to think that we're family as a city and although things maybe painful, doing the painful and making the painful choices in allowing even a small part of harmony in our workforce is worth it and ultimately it's worth it to our residents because they're the ones that are going to suffer not just with layoffs that we're going to have no matter what but they are going to suffer through a depletion of our workforce which is going to happen and they are going to suffer through any work stoppages they are going to suffer as we go through June 21st, retirement reform, potentially putting things on the ballot, we're unnecessarily creating so much angst and anger and tension, I don't think is our only choice. We are close with IBEW, give them a few more days to agree with what we're trying to achieve but give OE3 aons MEF and CEO really see the writing on the wall and see if they're willing to come forward with some kind of offer. We are not an island. This is happening throughout the state. I just read about San Francisco's mayor putting forth a proposal that everyone although they are not 100% happy with it seems to be comfortable with. They have the same pension and deficit issues. I know San Diego and L.A. have also made agreements that haven't been easy, haven't been comfortable but they did it in a way that everyone truly shares in the pain but continue on issues that are of critical importance. And so I think that in order to maintain harmony with our residents and with our employees we should give every possible opportunity for our bargaining units to come to an agreement that we can be satisfied with and not simply have agreements that we're going to stick so hard and fast to that we do run the risks of what some of

our public speakers indicated in their challenge to what we're doing today. But I think that anyone that believes truly in negotiation should believe in negotiation until the 11th hour and a half. And at that point, if it doesn't work out then you can make your own independent decision. But I don't think we're there yet, just as we were not there last year when we gave a few more days and ended up creating in not happiness at least a little harmony in order to continue difficult discussions.

>> Alex Gurza: Councilmember Kalra -- [applause]

>> Alex Gurza: I did want to mention again, you mentioned specifically operating engineers who as you know I've indicated voted down a mediated tentative agreement. Subsequent to that they e-mailed my office on Thursday May 26th telling us that they had completed a straw poll of their members and what they would be willing to agree to. In short without going through all the details it is a two year contract that would not allow the city the ability to negotiate retirement reform or sick leave payout for that entire two year period. There are other issues where it doesn't get to the 10%. Again these are not small issues that separate us at this stage of the process.

>> Mayor Reed: Vice Mayor Nguyen. And then we're going to break for lunch after the Vice Mayor's done.

>> Councilmember Nguyen: Thank you. I'm going to be very brief. I just wanted to thank the City's negotiating team for all the work that you've done since January. I know there's been a lot of accusations in terms of not disclosing information and not giving up information when it's being asked but I just wanted to let you know and also to let the audience know that the city negotiating team is not doing anything beyond the scope of what this council is directing. So if you're going to blame anything you should blame the council and not the city staff because they are not going outside the scope of our direction. This is not an easy answer. I mean -- an easy decision for anyone. We might feel different in terms of imposition, in regards to our political philosophy. Or our perspective. But what I foresee in terms of our decision today, it's practicality. And protecting the jobs in the interest of the residents that we serve. Honestly, in regards to the four remaining bargaining units I haven't heard anything to date that offer any type of alternative that satisfy the council's direction in terms of the 10% total compensation

reduction. If I have, I would be more than happy to accept that. But the reality is, we haven't and I think that staff has explicitly explained that this is not imposition over the contract. If the unions are not satisfied, we can have negotiation continue tomorrow. I'm very sympathetic to what Mike Enderby is saying. I think the hours that you accrue, there's got to be a way to work that out. And I think even after imposition there will be a way for that to happen if the bargaining units come to the table. So I will be more than happy to support the motion. I think it's time to move on. I think it's time to get our focus back on preserving the jobs and preserving the services for our residents. I think it is our responsibility to do that. Thank you.

>> Mayor Reed: It's 12:30 we're going to take a half-hour lunch break. We'll be back in here at one minute at 1:00 or two minutes after 1:00. We have a half hour recess. We're going to recess for half an hour. [Recess]

>> Mayor Reed: Good afternoon, we're back in session after a brief lunch recess. We were in the middle of the council discussion. And next up was Councilmember Chu. And then Councilmember Rocha.

>> Councilmember Chu: Thank you, mayor. I have some questions written down on a piece of paper, I'm still looking for it. So give me a minute. Oh, there we go. Thank you very much. The question is that, if the city implement our final -- implement our final offer, what made the MEF or CEO or those four bargaining group, what have we made -- what made they -- what they do or what they may do in response? Have we assessed the possibility of what they may do in response to the implementation?

>> Alex Gurza: Well, Councilmember Chu, they can respond in a couple of ways. We have what we hope they do which is to want to come back to the bargaining table and reach a negotiated agreement. On the other hand, they also have other options. Whereas a public agency like the City of San José may implement its last best final offer after that a bargaining unit could take job actions up to and including a strike.

>> Councilmember Chu: Okay. So I guess we have to talk about is before that, the city we do have a plan to react to a stopping of the workforce?

>> Alex Gurza: Clearly that one is that we haven't received any notice or indication of any bargaining unit who may withhold their services by engaging in a work stoppage.

>> Councilmember Chu: Do they usually need to give us a certain day's notice?

>> Alex Gurza: Not necessarily. There isn't any contractual obligation to provide us with a certain number of days' notice. We certainly hope that that would happen. But to your point, although that we haven't received any notice, we clearly know that that is a possibility. And we have begun strike contingency plans in the event that that occurs.

>> Councilmember Chu: Okay. The other question is there was some talk about maybe filing some PERB litigation on service bargaining. What is the potential liability to the city if they prevail?

>> Alex Gurza: I think you're referring to an unfair labor practice charge which actually could be filed by not just the bargaining unit. An employer, the city could file an unfair labor charge, as well as the bargaining unit. That is filed with the state agency called PERB, the public employment relations board, who handles those complaints. The thing you've mentioned that was raised is a term called surface bargaining which --

>> Councilmember Chu: Hard bargaining?

>> Alex Gurza: Surface bargaining which again is one indicia of bad faith. Normally, unless what you have -- unless you have what is called a per se valuation, good-faith bargaining is reviewed or bad-faith bargaining would be on a totality of circumstances test which looks at the entire process. And in terms of what perb could order I would defer to the City Attorney on that particular question.

>> City Attorney Doyle: Councilmember if in the event and I think Alex has pointed out I want to emphasize the totality of the circumstances, any claim is what's important. And perb has the ability to unwind or undo the deal and order you back to the table to negotiate if that happens. It's never happened in our experience here in the City of San José. So fortunately, we've not been in that position and we have a good record.

>> Councilmember Chu: Thank you very much. I remember, in support of imposition of OE3 a couple of years ago, during late June, I felt that we were realize running into a steel wall. And listening to the bargaining unit's presentation and comparing those irhave here, I don't think we're that far apart. I will not be supporting the motion. Not because I don't support the term of the motion but the timing. I believe that we should continue with good-faith bargaining with the union. I think that will make much easier, make good inroad when we start talking about pension reform. Because pension reform is a very -- is a big deal. When I went home Friday, I didn't expect that the ALP would come back with the agreement. So I'm still -- have a very hype hope that we will be able to

come up with some final contract, instead of just imposition of termination. And if we have another chance to vote on imposition, I would really appreciate that the staff can provide us with side-by-side comparison chart. Councilmember Liccardo asked a question, what is the -- you know, the origin of the contract and differences with the MEF and then Councilmember Liccardo asked the same -- if we ever had a chance to revisit, to vote on implementation, really, really helpful if we have a side-by-side comparison. Thank you.

>> Alex Gurza: Councilmember Chu, I just wanted to add that nobody from the public doesn't know that we do spend countless hours in closed session do report back mediation, mediation, don't want to make it seem like we haven't been providing you with the information, the differences and some of those discussions have been held in closed session.

>> Councilmember Chu: I understand that Alex. So when the question was directed to you, you ask for your staff to help out with the answer. Because I didn't say that you haven't presented to us before. But with 11 bargaining units, I just -- you know, I just -- I was confused, you know, I need more clarification. Just like you did, when the question directed to you on the dais. You turned to your left, you turned to your right, you asked them to help you with the same amount of information.

>> Alex Gurza: Understood.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. I'd like to thank my colleague, Councilmember Kalra for speaking on some of the philosophical points that I have with what's being discussed here today, that I concurred with a number of them, and I also want to mention Councilmember Nguyen's comments on the sick leave, to implore staff to consider discussing that issue further. I'm going to ask staff for some feedback on the proposals, I know you oftentimes refer to, this is a direction from council, to workers through a direction from council, but outside of the direction from council, I'll use the 10% as an example. Alternative such as the tiered approach that I heard was discussed, higher end salaries, compared to lower end salaries, tiering that out, the impact is not 10%, and

on the higher end maybe a higher concession. I know we'd talked about this, I'm new to this process, I'm sure you had discussed this last year but you had been open to that as a city, the statement I had heard was, we're open to that and waiting for the bargaining units to present something. Have we taken it on ourselves to come up with an option like that or waiting for the bargaining units to present something to us?

>> Alex Gurza: No, we have not made an affirmative proposal on that item.

>> Councilmember Rocha: Why wouldn't we?

>> Alex Gurza: Councilmember Rocha, we had discussed in the past, one of the challenges when you have 11 bargaining units and a civil service structured system, is being able to achieve that. Across the board with 11 bargaining units, bargaining units that cross over in pay, if you were to let's say take MEF as an example. They have sort of a wide range of pay. And so in order to achieve that with them, for example, the higher paid employees would have to take a bigger percentage cut than the lower ones. Then you'd have to see if they agreed to that, how would that impact CAMP, who supervises them. There are a lot of complexities in a civil service system with 11 bargaining units to achieve that. If you were an employer, you were able to do it, look, people in this pay range would take a 20% pay cut so that these could take 5, that would be somewhat more easier to actually achieve so you didn't have these unintended consequences with a civil service system that has steps and ranges across bargaining units. But we were open if anybody had any ideas, to be honest with you, that could solve that issue. To say, we are willing to take a bigger pay cut and here is how we're willing to do that, we didn't receive a proposal on how to do that.

>> Councilmember Rocha: Could some of it be the complexity of what you just spoke to for a reason of not receiving that proposal?

>> Alex Gurza: Very honestly, there are complexities that the bargaining units would face, in terms of going back and saying this band of employees is going to take a 20% or 15% for these to take 5. It presents a lot of complications I think to both sides of the bargaining table.

>> Councilmember Rocha: Who would have more resources to try to come up with a proposal, the bargaining units? Again I'm asking because I don't know the answer, not because I'm trying to put you on the spot. Would you expect that they have the resources to come up with something that complex or would it be easier for us to do that work?

>> Alex Gurza: I don't think it's a resource issue, it's how would you do those issues, from my perspective I don't think it's a resource issue.

>> Councilmember Rocha: So you're suggesting they would have the resources to do something like this?

>> Alex Gurza: Again I think that issue would really not be a resource issue where I think you have to hire somebody. I think it's the issue of the creativity in thinking about here's how we might be able to address some of these issues, so that people making this much money are going to take a bigger cut than others. You also have the issue of salary versus hourly and you have some hourly employees, for example, that make more than their salaried supervisor. How do you account for all of that? It's a matter of what ideas do you have that meet both sides and could get ratified.

>> Councilmember Rocha: Okay, this is an example I talked about using 10%, one example and I'm sure there's other examples on issues we have been negotiating or you have been negotiating on many differently levels. I think part of my question is again being new to this recognizing whether I felt we did our best in trying to come up with proposals to help the other side in terms of finding solutions that might be amenable to them as opposed to the hard line on some of these issues in order to balance our budget. That's the question I have on the big picture and without pulling out specifics I don't want to question or criticize or suggest that we didn't but just for me, I'm not sure I did my best in trying to come up with alternatives for you to go negotiate on. On disability leave, I know we have suggested reducing it from nine months to three months. Now was there any talk and forgive me if we did discuss this in some of our closed session and maybe we can't discuss it in open did we discuss it on grandfathering on the new disability leave?

>> Alex Gurza: I don't know if it came up in any of our bargaining teams, whether that came up as a proposal to grandparent people in. We have as the nine months to three months is not the first change the city has made. We did negotiate a change several years ago from 12 months to nine months. It was originally 12 months. But again I'd have to ask the lead negotiators whether or not that concept came up at the bargaining table.

>> City Manager Figone: Alex if I could just --

>> Councilmember Rocha: Who would that be?

>> City Manager Figone: Councilmember if I could, in the move from the 12 to the nine was there any grandfathering in?

>> Alex Gurza: No, there was not. And I did confer with my staff and that concept did not come up during the bargaining. What we did do is, for the people that have two-year contracts starting for example with the coalition, we phase it it out. So rather than, going from -- we originally started with eliminating disability leave supplements. What was negotiated was a phase out of a two year process, that is where the negotiations actually come into effect. Instead of doing it right away, first year is going down to the three months and then for those that have the two-year contract the elimination in year 2.

>> Councilmember Rocha: Do you have an idea how many are on disability in the city?

>> Alex Gurza: I do not have that number off the top of my head. But the question becomes you know we just want to make sure that this change does not mean that people on work related injuries will not still receive benefits. They receive the benefits mandated by state law and in addition, once that -- they can supplement their own leave time, in order to supplement their workers comp benefits. That exists now but it doesn't kick in until after the disability supplement. They will be able to do that now. So we don't want to make it seem like the

employees will not have any other alternatives when they're on a work related injury. And I don't have the exact number of employees.

>> Councilmember Rocha: Thank you for trying. I think it's too late in the process but I would like to suggest that why consider grandfathering my guess is that the number's probably not that high that are currently on disability so as we phase this in the impact in my opinion might not be that great. If I'm wrong then I'm happy to withdraw that suggestion. But I think it is something to consider, about impacting some of those currently on disability and so-called pulling the rug out from underneath them. Although I'm not sure I'd have to understand the issue before taking a strong position but I'd like you to consider that. I didn't expect call it being a bit naive coming in January that I'd have to make a decision such as this. I'd heard and read and followed a bit last year in terms of imposing and not being personally vested in it or percentagely involved, it's easy to sit on the sidelines and criticize. I've struggled from two levels, that's practically and philosophically. It's interesting that my colleagues, two colleagues spoke about the practical and philosophical side to this. I don't support these actions philosophically, but my role of a councilmember requires more of me. With that said I have a number of reasons why I'm considering supporting these actions and one ask out of necessity. We have a budget that needs to be balanced, and reducing employee costs is a necessary component of that. Any funds that are not seen in these reductions will likely have to come from further staff and service eliminations, and I feel that we've gone far enough in that direction and I'm concerned about how far we have gone. Equity and fairness is another issue that I thought about long and hard and we have six other units that have heard our call for help and have stepped up and for that I'm grateful for their sacrifice and given that I'd have a hard time looking those folks in the eye and answering their questions as to why the other groups did that, and we wouldn't expect that of other bargaining units, and as has been explained to me by you Alex, is that generally these terms are the same terms that we've asked the other groups and they signed contracts. On the last issue for me comes from the past year, before I got here, where I spoke to many, many, many residents in many different contexts and during that time I heard over and over and over again that the residents of San José, our taxpayers, expect fiscal reform on our finances, and this includes reducing the employee costs. Whether or not the reasons or just or fair and whether or not you agree with them or disagree with them philosophic her or practically it is their tax dollars and their voices that need to be considered and I have to consider them as a councilmember. I've heard the word blame a lot and I'm not one that wants to

throw it around. There have been many statements about who's responsible. I have no interest in the blame-game. It serves no purpose. You can blame me for my decision today, and you can blame me for the situation you're in. I have no problem with that. I do have to make that decision, and I'm not looking forward to that decision. But I'm for everyone here today, to listen to the issues that have been raised, the emotion and distrust is not imaginary, it is real and if you think that you have no role and I speak for myself included, if you think that you have no role and that you have done all you can to avoid this, I would question that. Because I always feel if there are folks here that are speaking and have a voice and they feel it's not been heard then we need to do better. And if this scenario plays out again next year, let me be very clear today, now that I have context and now that I have reference in my opinion if we don't improve these efforts, and I feel if we don't improve them, and I'm saying we, and I'm not saying anyone else, I'll be very loud in my criticism of them, louder than I am today, and I'll be sure to work harder to make sure we're not in this situation again. Thank you.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I don't think anybody could put it better than you did Don. You expressed exactly what I'm feeling to the T. I would like to add to that, as well. That any way that we can prevent people from going out the door by being given a pink slip is something I absolutely want to do. I think all of us need to work a little harder to get through this. But we also need to work to bring more revenues into this city. Especially in reference to next year. We need to keep up the dialogue with Sacramento, to keep the pressure on. In fact I think we need to keep the dialogue in Washington as well. These are really really tough times that have gone on probably far longer than they need to have or should have. So I'm with you, I think you stated it very, very well. Everybody's had an opportunity to work things out and I'm sorry that things didn't work to everyone's satisfaction. And it's a tough tough thing to do but I was -- I was put into this job by constituents. They are the people that I need to answer to. And despite the fact that I know many of you and I have an affinity for what you're going to, I have to put the constituents first. Thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you just briefly mayor. I appreciate the manner in which Councilmember Rocha expressed how he's feeling. And I think a lot of us feel similarly. And I think that I don't want it to -- I certainly don't want there to be any impression that I don't agree that we're in a difficult fiscal situation and that a choice should be to have to cut services dramatically. And as I stated earlier, decisions I make are for our ability to serve our residents. And just this last year we were able to achieve what we sought to achieve, we did it by having majority of the bargaining units come forward and they came forward at the 11th hour, they came forward in the last few days. We had a number of them come forward so we did it before. And I think that that's worth it enough not just to our employees but to our residents to have some sense of harmony and the ability to still be able to have the City Manager's budget expectations met in terms of preparing for a number of layoffs. And and I think that's what from what I've heard from my residents that's what I've heard time and again is that there is concern for the cuts in services. And they also have concerns for our employees as well. And many of our employees are residents. But I think that we should be very -- I just want to give every opportunity and I think that there's still a very small opportunity. But you know what? It was a very small opportunity last year, when I implored my colleagues to give a little bit more time. And it ended up being a little bit better than it would have been -- actually a lot better than it would have been if it had been imposed upon and a little bit better, a little bit easier for the employees to take what was being asked of them when they at least were able to say they agreed to it and had a majority of their members agree to it. And I think that's what creates not just a better workforce internally in City Hall but it creates for a better environment in the neighborhoods, better services to the residents and ultimately, they are the ones that we do have to answer to and I'm not suggesting that we shouldn't. I suggest that we do it together with our employees and not -- not in such a manner that creates more animosity and ultimately reduces the quality of our workforce.

>> Mayor Reed: I think that concludes the council debate on this item. We have a motion on the floor made by Councilmember Constant to approve the staff recommendations on the four items. All in favor? Opposed, got one, two, three opposed, Kalra, and Chu and Campos opposed, that passes on an 8 to 3 vote, concluding our work on those items. We have one more item, 7.1 on the agenda before we adjourn into closed session. Dave Sykes is here so we can at least get started on that item. Take a minute and let the staff move ahead. Want to publicly thank Councilmember Pyle for letting me use her blanket. It's a lot warmer in here than it was before. Okay. Item

7.1. That is award of contract for construction of the San José environmental innovation center, contract rebid et cetera. I think Dave Sykes will take that one.

>> Thank you, Mr. Mayor, members of the council. Dave Sykes, acting director of public works joined by Harry Freitas from Public Works, and Jo Zientek from ESD. Wanted to go over the environmental innovation center project and our recommendation for today. We are going to provide a brief description of the project and then get into some of the issues that have been raised through the procurement process. Okay, in site plan shows the work that's going to be going on onsite. The vast majority of the work is renovating the existing warehouse that's been in the City's possession for some time. The area in green shows some new construction. What's normally called a butler building, a building that's purchased and then erected on site. Before getting into all the details with regard to some of the issues raised through procurement, wanted to provide a little bit of context. We are and I've mentioned several times to the council in the last few months, in a afternoon extremely competitive environment. Last two years we would get two bids on a project. Now we are getting ten to 20. Years ago we would get a protest once a year at most, now in at least a third to 50% of our projects we see a bid protest. Our plans and specs tend to be very thorough and tight. Here are the plans and specs for this job right here on the table. Most of the protests about protesting the validity of the other contractor's bids, not the conditions of our plans. We look at two things when it comes to issues with regard to the bid and protest. The first is, is the bid responsive, is it complete, was there competitive advantage or did the issue affect the bottom line of the bid? The second issue is, is the bidder responsible? Can the bidder do the work? Those are the two main issues we're looking at. As I mentioned several issues have been raised and we're going to walk through each of those one by one. The first issue was, a protest we received by the fourth low bidder. The protest had to do with failure to list a subcontractor for acoustical plastering. The subcontractor's list is intended to prevent in essence shopping for the subs. It requires the general to list out the name of the sub, the address of the sub, and the portion of work. The actual detailed scope of work that's going to be done by that sub is actually on a document that typically the city doesn't see and it's not included in the bid, it is the sub-bid between the sub and the general. That particular document provides all the detail of the scope of work between the two entities. This particular protest challenged the description of work. We do not believe that challenging the precise description of the work is relevant to determining if the bid is responsive. So in this case we found no merit to the protest. The next issue is, with regard

to a clerical error made by applegate Johnson. Applegate Johnson is the apparent low bidder. This has two subparts. Applegate Johnson requested to make a clerical change to a contractor, subcontractor they listed for the metal building. They wrote the wrong name down and were requesting to clarify that. The subbid, the same document that goes between the subcontractor and the prime contractor, we reviewed that document, and it did appear as though they wrote the wrong name down. They wrote innovative on the sublist rather than J.R. Daniels. The second part of this issue is that they requested this clerical change verbally in a phone conversation, rather than in writing. We typically require that such a request would be made in writing. We do believe the council can waive this requirement, since the reason we require it in writing is to protect the subcontractors. In this case, both entities innovative and J.R. Daniels are the same entity. And so requiring it in writing did not seem to be something that we needed to adhere to in this case. So our general conclusion is there was no competitive advantage in allowing the clerical correction on this bid. The final issue that we're going to outline has to do with J.R. Daniels in claims made in essence outside the protest process but nonetheless something we did look at and those are claims that J.R. Daniels is not responsible and not licensed. Our biggest concern of course is with the licensing of J.R. Daniels. We will not allow an unlicensed contractor to work on a city job. I personally spoke to this contractor state licensing board several times to kind of figure out what the current status is of J.R. Daniels. Did determine at the time of bid theyer licensed, subsequent they got their licensed revoked and they remedied and are licensed. At the time J.R. Daniels is a licensed contractor. I think it's important to note on a project like this we have at least 30 subcontractors listed on each job so it's very difficult for us to go through a process of evaluating each subcontract to determine if they are responsible or not. It has apples been our practice to focus on the responsibility of the general contractor. And yes, numerous issues have been raised about J.R. Daniels and we've not been able to research all of them fully. But at this point, they're a work that J.R. Daniels would be doing in this job is somewhat minor, and we have determined that he does have the support of the building maker, the company that's making the building. Nonetheless, the real root of this issue and the question we asked ourselves is, is the issues around J.R. Daniels, do they make applegate a nonresponsible bidder? And so the conclusion we came to is no, we cannot say that applegate is a nonresponsible bidder for including J.R. Daniels as part of their project. That concludes our presentation. And we're available for questions.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thank you, mayor.

>> Mayor Reed: I do have some requests from the public to speak. City Attorney, does it matter whether we do the questions first or hear from the protester first?

>> City Attorney Doyle: No, it doesn't.

>> Mayor Reed: Councilmember Liccardo go ahead.

>> Councilmember Liccardo: I agree with Dave's conclusion that this doesn't make amgate the -- a nonresponsive bidder. And I'd like to put a motion on the floor but before I do I'd like to explain. I am concerned, I just received a letter dated May 31st from the Weinberg Rogers law firm, had very brief conversation with staff about this. I am somewhat concerned about issues of compliance with the public contracts code. And given the problems with J.R. Daniels I do wonder if we might just be doing ourselves a favor of approving the staff recommendation but requiring the winning bidder to return to staff with a substitute subcontractor. It seems to me that this is a fight that is probably not worth picking. Particularly, given the relatively minor role that the subcontractor plays, in the larger project that we have in front of us. And so I'd like to put a motion on the floor, to approve the staff recommendation and award the contract to applegate Johnson but to require them to return to staff with a substitute. Thank you.

>> Mayor Reed: All right, we have a motion on the floor. I think I'll take the public testimony now that we have a motion on the floor. We have half a dozen people that want to speak on this. We have the bid protestor and I'm not sure what everybody else's connection. So we'll start with the bid protestor which is somebody representing applegate Johnson. Is there anybody here representing the protest filer? Let's start with them, try to get this. So we got somebody her from can-do I think that's Nina Kendall. Did you file the protest? Before I get myself too confused, let staff straighten me out. Who is the protest?

>> The actual protest was filed by Haggesson, the information provided to us.

>> Mayor Reed: I want to take the protest filer first, and then we'll come back to anybody else. So. Is there anybody here from the protestor? Hagenon?

>> Hagenon Pacific.

>> Mayor Reed: Sorry for the confusion but I'm not sure who has got what in this setup here. Anybody from the protester? Anybody who wants to speak, let's just do that. Come on down.

>> Thank you, Mayor Reed, councilmembers. Thank you for the opportunity to speak on this issue. My name is Dan prince and I'm president of ironworkers number 377 which represents thousands of workers work in the Bay Area and throughout Northern California. My organization locally statewide and nationally has dedicated itself over the years to uphold standards in the industry with regard to compliance, with relevant laws and performance of the craft in a safe, skilled, and competent manner. The question that looms in the situation today is why would the City of San José want to compromise a level playing field in order to provide a competitive advantage for contractors that violate laws regarding payment of workers, suppliers and subcontractors? And why would the city bend the rules to allow such a subcontractor to participate in Public Works construction in San José? I'll leave it to attorneys to explain in detail the illegalities involved in the process so far and a way to correct prior problems and assure prudent procedures that protect the taxpayers of San José. However, it's clear to me from my own reading of the code that the Department of Public works can't simply approve substitutions of listed subcontractors based on a simple telephone call from the prime contractor. It's also clear to me from reviewing the bids that applegate faxed to the city after we filed our bid advisory and attached to the city staff memo dated May 26th, 2011 that innovative structures and J.R. Daniels are not arms length businesses but are intertwined to the point that J.R. Daniels use innovative structures to warn city its work which is in the bid documents. Therefore the council should not allow its Department of Public Works to sell telephone requests that J.R. Daniels commercial builders should be substituted for innovative structures. In order to ensure compatibility, compliance with the law, we request that

the council tell the Department of Public Works that it may only accept a substituted steel erection subcontractor if that business is A --

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

>> Okay.

>> Mayor Reed: All right. Looks like Neil Struthers is up next, then Nina Pindle and Patty Gates, then I'm going to give applegate counsel's representative the last word.

>> Good afternoon, honorable mayor, councilmembers, Neil Struthers, building construction trades council. As you know and I've said here before, construction workers are suffering 30% unemployment in this economy, and there's a number of reasons for that but one of them is the whole public bidding process which typically generates this race to the bottom as general contractors feel compelled to take numbers from contractors they know are neither not responsible or have no idea whether they can perform the work, for fear of not being the low bidder on bid day. As Mr. Sykes said you've seen 25 to 30 bidders. This is a problem to be solved on another day. What I think is important to understand is the background, this is more prevalent than you believe, we have more subcontractors that are not competent to do this work. We're not here to protest the award to applegate Johnson. We think you should award this contract to applegate Johnson for fear of not losing the tax credits that could come to this city from this project. But we're very concerned that the listing of these subcontractors, in particular Innovative Structures and J.R. Daniels, which seem to be the same contractor, you heard earlier in the presentation the reason for that. But it appears that the substitution of J.R. Daniels for innovative structures was done improperly as per the public contract code, which opens you up for litigation for writ of mandamus that you hear about that I think ties up this project for at least 30 days until the judges decide who is correct. I think that would be a mistake. Our solution is very simple. I think you as a council cannot accept the substitution, have innovative structures listed as subcontractor, knowing they don't have a license at the moment, bite the bullet on that for now, but expect from Applegate Johnson that he will substitute that contractor because he doesn't have a license, shortly after award, with a responsible contractor, and I think that threads the needle in this particular

situation, allows you to move on with this project and gets rid of a nonresponsible contractor and gets around the complications around it and keeps you out of court. That's my suggestion, it's a very complex matter, I think that it's simple. Thank you.

>> Mayor Reed: Nina Findle, Patty Gates.

>> Thank you, Nina Findle, representing can-do which is a joint labor management compliance group in the ironwork industry. Let me say first that Innovative Structures and J.R. Daniels are well known to us. We have dealt with many, many problems with these contractors and if you'll look at the third attachment to my letter, you will see that innovative structures has, as far as we know, at least, almost a quarter million dollars of wage violations in the last five years, wage and apprenticeship violations that had been found by state agencies not to mention the complaints that are in the pipeline for violations. The law governing substitution of subcontractors on Public Works jobs is very strictly construed by the courts. It's not waivable by the public agency. There are very strict rules, so that what is put in as a public bid, is then either followed or there is a written record. And in the case of clerical error, even affidavits are required. These are not requirements that any city official can simply decide are waivable. That is not going to stand up in court. So I believe you have two choices today. If you go forward, having violated the subcontractor law, I believe that you are vulnerable to a writ of mandate, a court hearing, telling you you must obey the law. I believe also you run into some other problems, as has been stated, innovative and J.R. Daniels are pretty much one and the same, owned and operated by the same person. The registrar of the contractor state labor -- state license board is going to be hearing a case soon that could well result in revocation of both licenses and any licenses with which Mr. Daniels is associated. Also, there are serious questions about whether J.R. Daniels is even responsive to the bid since he has not been licensed under a steel specialty license for the required ten years. And those specifications are also attached to my letter.

>> Mayor Reed: Sorry your time is up.

>> Thank you.

>> Mayor Reed: Patty Gates, John Rawls and then James Daniels.

>> Hello, my name is Patty Gates, I'm an attorney with Weinberg Roger and Rosenfeld. I thank you for hearing this today. One of the first rules we learn in law school is if the court is going your way, you probably shouldn't say anything. And I believe I heard one of the councilmembers already indicate that there is concerned about the process that was followed. So I'll say very little and I know I only have two minutes. The one piece of rebuttal I'd like to offer is, that the director of Public Works implied that there was a waivable provision. But in fact, under public contract code section 4107, and that's covered in our brief, there is no waivable provision. Public entities cannot waive the writing. And it's not just because the law is there to protect subcontractors. The law is really there to also protect the public. Public bidding is one of the most judicially scrutinized matters in our state of California and probably in every state and I probably don't have to tell that you. But in our papers we also explain that under public contract code section 100, the purpose of this law is to also protect the public and the taxpayers in the spending of their money. And specifically, to provide all qualified bidders with fair opportunity to enter into the bidding process. And to eliminate favoritism, fraud and corruption in the award of Public Works. We're not alleging that there is anything of that here. It's only relevant because that is why the courts scrutinize so closely. And I would urge you to look at the document that was submitted by the Department of Public Works, that is the bid that was provided by J.R. Daniels and innovative to Applegate. And if you look at that bid, on the final page of it, under condition letter F you'll see --

>> Mayor Reed: Sorry your time is up, I'm sorry.

>> Thank you and thank you for listening.

>> Mayor Reed: John Rawls followed by James Daniels.

>> Good morning, mayor, councilmembers, I'm John Rawls, I'm legal counsel for applegate Johnson. First the bid that was used here was not a bid of innovative. It was a bid of J.R. Daniels and it was a clerical error to have listed innovative. The bid is on behalf of J.R. Daniels, the signature block says J.R. Daniels and the license

number says J.R. Daniels. There was no competitive advantage given to Applegate, as result the bid with the same workers they intended to give they couldn't have pulled out and this certainly don't want to pull out. Their vice president is here and he wants the job and nothing's been presented that suggests applegate Johnson isn't a responsible bidder, fully capable of performing the work. I didn't have the benefit of the Weinberg Rogers letter that was mentioned. But these are issues that need to be managed by the contractor and city staff working together, but nothing that's been presented allows anything but the award to the low bidder here applegate Johnson. Thank you.

>> Mayor Reed: All right, one more speaker, James Daniels.

>> James Daniels. Mayor and councilmembers, I appreciate this opportunity to briefly talk to you. The bid was submitted under J.R. Daniels as it clearly says across the top. We do have a separate doing business as innovative steel but that -- the bid was submitted under J.R. Daniels and J.R. Daniels' license number. We are licensed. We have the support of butler manufacturing, the manufacturer that will be building the Butler building. And basically we have been building butler buildings for over 20 years. We are qualified. We have the staff to perform the work. And we submitted under the correct name and submitted the bid correctly. Thank you.

>> Mayor Reed: Thank you. That concludes the public testimony. City Attorney do you have some things to adds?

>> City Attorney Doyle: Couple of comments. First of all with respect to the waivability of the defect, it is well established law and this is case law, that it's waivable if there is a minor irregularity, which this is. At this situation, staff memo documents that this isn't a material defect or mistake, and so I think that we have done it in the past and I think councilmembers, fortunately it doesn't happen a lot, but I think councilmembers know that when there is a minor irregularity the city has the authority to do that. This is specifically in response to the motion. We can't direct a substitution of the subcontractor at this point. To do so would give an unfair advantage to applegate because other bidders don't have the same opportunity at this point. So I think at some point, down the road, if that's a possibility, that staff could work with the contractor if necessary. For example, if the sub doesn't have a

license as has been alleged at one point or some other reason. But at this point to award the bid and direct the substitution I think would be improper. So I think your options are award the bid, reject all bids, or award to and then probably the fourth in this case because the first three are using the same sub.

>> Councilmember Liccardo: Okay so Rick essentially there's no means by which we can award to applegate Johnson, allow staff to work with the contractor to correct whatever --

>> City Attorney Doyle: I think you can't direct a substitution which I understood your motion to be.

>> Councilmember Liccardo: Correct.

>> City Attorney Doyle: And that would put them at an advantage and I think to the extent that you can put staff on notice or have staff watch or work with the -- make sure that this subs contractor is responsible then I think that's something you could direct but directing a substitution is another issue.

>> Mr. Mayor, if I could just jump in to clarify a little bit. So there's two issues I think, that need to be kinds of outlined. The first issue is was there a clerical error or not. And I suppose that is to some degree debatable. But I don't think it's currently being debated. The second issue is, did -- was the appropriate process followed to request the substitution. And can we waive that? And that's a legal issue so I'm not going to put an opinion on that. I do believe the council has the discretion to decide whether they can waive that requirement, or not. The requirement for the substitution request to be in writing. So the council could say yes, we waive that requirement, which is currently staff's recommendation, or, the council could say, no, we don't want to waive that requirement, it's too important. So that would leave us with applegate, with innovation solutions as their sub. That sub is not licensed and they would need to remedy that and that is as far as I think we need to go.

>> Councilmember Liccardo: Rick is that consistent with your understanding?

>> City Attorney Doyle: I think innovative solutions are they an on going concern are they in bankruptcy or they were in bankruptcy?

>> What we determined in our investigation, I mentioned J.R. Daniels, and licensed, unlicensed and regaining their license. Innovation has been unlicensed for many years and seems to us there are several issues that they would need to resolve before they could become licensed. So at this point, they are not licensed.

>> Councilmember Liccardo: I'd be happy to modify my motion based on what I've heard but I would like to hear from Rick just to be clear.

>> City Attorney Doyle: I want to make sure I understand the motion. Because the substitution, if you are saying substituting the J. Daniels in place of innovative, I think that is something that would be okay. But I understood your motion to say go finds somebody else.

>> Councilmember Liccardo: I leave it to staff to figure out whether there needs to be somebody else or not.

>> City Attorney Doyle: Well that somebody else is the problem. It either has to be innovative solutions or Daniels which is one and the same.

>> Councilmember Liccardo: The question is does the council have the authority to decide whether or not we want to waive the requirement that any substitution be in writing.

>> City Attorney Doyle: Yes.

>> Councilmember Liccardo: In that case then I'd like to modify my motion to approve amgate Johnson as the winning bidder but decline to waive the requirement that substitution be in writing.

>> Second.

>> Mayor Reed: All right we have a motion on the floor. City Attorney, are we okay? All right. I have a question about the whole license issue as it goes through the life of a contract. We haven't started this contract yet. If we award the contract today, and a week from now somebody loses their license that is one of the 30 subs, what happens?

>> In that -- that has happened. We require the general to remedy the situation. If that sub is not licensed they would have to submit, and not having a license would be one of the reasons that we would typically allow a substitution of a subcontractor. They would submit that request. There is a due process for that. And ultimately, the council can make that decision, to substitute the contract, an unlicensed for a licensed subcontractor.

>> Mayor Reed: I think we had one of those hearings once.

>> We did.

>> Mayor Reed: Where it was just the issue of allowing the substitution. I was trying to forget that but I now remember it. Councilmember Kalra.

>> Councilmember Kalra: thank you, mayor. And I think that I'm in agreement with what Councilmember Liccardo is trying to do. Looking at -- looking at what was submitted by Weinberg Roger Rosenfeld, I'm looking at the fifth page actually the sixth page where it discusses the specific issue of whether the facts at hand establish inadvertent clerical error or not. And given at least the case law they cite to indicate that an inadvertent clerical error has more to do with the typographical or arithmetic error, not necessarily -- not a mistake in submission of the bid, and they claim that having listed innovative structures is an error in judgment not a typographical error. And with that consistent -- you know if that is the current case law that it's truly just a typographical error, switching one letter with another as opposed to a name of -- although they are farther of the same entity, you know, having a different name in there, is that something that legally, we people comfortable with, I would agree

with, if case law is current I would agree with Councilmember Liccardo that it's better than to not waive than to risk what would certainly be legal action if we were to go forward and allow this type of waiver.

>> City Attorney Doyle: And I think it can go either way. I think our point and the staff's point is this is a minor irregularity, given the fact that it appears to be an honest mistake in the name given the same principles are owning its.

>> Councilmember Kalra: Given it's a minor irregularity, it is the same company operating under two different names, therefore in order if this motion goes forward in order to remedy the situation, applegate Johnson would be required to remove innovative structures and bring in another subcontractor.

>> City Attorney Doyle: That is correct.

>> Councilmember Kalra: And so since we've already -- since it's already been established that innovative structures and J.R. Daniels are one and the same, they would have to bring in someone other than innovative structures or J.R. Daniels nor to remedy the contract.

>> City Attorney Doyle: That is correct.

>> Councilmember Kalra: With that I'll support the motion.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: That was the same very question that I had. So I'm good, thank you.

>> Mayor Reed: Councilmember Pyle. Okay. So we have a motion made by Councilmember Liccardo. All in favor, opposed --

>> Councilmember Kalra: What?

>> Mayor Reed: That was an aye. So there are no nays so that motion carries unanimously. So that is -- the motion was approved. That completes item 7.1. Do you have any cards under open forum? We have no cards under open forum. We will adjourn to closed session. We will not be back in here until next week.